

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

HARRY N. YOUNG, JR.,)
)
)
Plaintiff,)
)
)
v.)
)
KEVIN MEYER, in his official capacity,)
as Lt. Governor of the State of Alaska,)
GAIL FENUMIAI, in her capacity as)
Director of the Alaska Division of)
Elections, and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)
)
Defendants.)
)

) Case No. 3AN-19-_____ CI

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff Harry N. Young, Jr. hereby moves the Court, in accordance with Rule 65(b) of the Alaska Rules of Civil Procedure, to issue a Temporary Restraining Order enjoining Defendants from providing printed petition booklets to the proponents of a ballot initiative before the lieutenant governor certifies the initiative application as proper. Alaska's Constitution and statutes provide a detailed, sequential process that must be followed to provide printed booklets to initiative proponents. Without immediate injunctive relief, Plaintiff will suffer the irreparable damage of having the State government violate the Constitution and laws state public officials are sworn to uphold. The Alaska Supreme Court's decisions in *State, Division of Elections v. Metcalf*, 110 P.3d 976, 978-79 (Alaska 2005) and *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273-74

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(Alaska 1992) stand for the proposition that the State's inability to enforce its laws causes irreparable damage to the State and its citizens.

Here, Plaintiff asks the Court to uphold this principal and the explicit provisions of Article XI, Section 3 of the Alaska Constitution and AS 15.45.090(a) and enjoin Defendants from providing printed booklets before the lieutenant governor certifies the legality of the 19AKBE initiative. As demonstrated in the attached Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff's request meets both the balance-of-the-hardships and probable-success-on-the-merits standards for issuance of immediate injunctive relief. Plaintiff respectfully requests this Court enter the attached Order Granting Motion for Temporary Restraining Order and Setting a Hearing on Motion for Preliminary Injunction to maintain the status quo and Defendants' compliance with the Alaska Constitution.

DATED at Anchorage, Alaska this 18th day of September, 2019.

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) Case No. 3AN-19-_____ CI

**MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiff Harry N. Young, Jr. (“Young”) seeks an immediate injunction to halt Defendants Kevin Meyer, Gail Fenumiai, and the State of Alaska, Division of Elections (collectively “State Defendants”) from violating the Alaska Constitution. Alaska’s Constitutional founders carefully included a detailed and orderly process for citizens to directly enact legislation through citizen initiative. That process calls for the issuance of petition booklets and gathering of signatures only **after** the lieutenant governor has certified the legality of a citizen initiative. Yet, on September 9, 2019, the State Defendants agreed to ignore the requirement of certification prior to issuance of the booklets and Stipulated to issuing signature gathering petition booklets for the Alaska Better Elections

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Initiative **before** Lieutenant Governor Meyer certified the legality of the initiative. Plaintiff Young seeks an injunction to halt State Defendants from ignoring the Alaska Constitution, and to require State Defendants to follow the directives of Article XI, Section 3.

The Alaska Constitution provides a detailed framework for citizen initiatives to reach the general ballot. Article XI, Section 2 provides the first three steps of the process. First, the proponents must submit an application to the lieutenant governor that contains the bill to be initiated and signed by not less than one hundred qualified voters.¹ Second, the lieutenant governor is tasked with determining whether the application is “in proper form.”² Alaska Statutes 15.45.030 and 15.45.040 define the proper form of an initiative petition, based on the Constitutional requirements and limitations of initiatives and legislation. Third, if the lieutenant governor determines that the petition is in proper form, “he shall so certify.”³ But, if the lieutenant governor determines the petition is not in proper form, “[d]enial of certification shall be subject to judicial review.”⁴ In other words, initiative proponents have the right to ask Alaska courts to review the lieutenant governor’s denial of certification, and, if successful, obtain a ruling that the initiative application is in proper form and ordering the lieutenant governor to certify that it is in proper form.⁵

¹ Article XI, Section 2 of the Alaska Constitution.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See e.g. *State v. Trust the People*, 113 P.3d 613, 618 (Alaska 2005) (Alaska Superior Court Judge Mark Rindner “held that Lieutenant Governor Leman erred by denying certification and

The fourth step is where State Defendants went astray in following the Alaska Constitution. Article XI, Section 3 of the Alaska Constitution states in relevant part: “After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors.”⁶ The statute implementing this constitutional provision likewise provides: “If the application is certified, the lieutenant governor shall prepare a sufficient number of sequentially numbered petitions to allow full circulation throughout the state.”⁷ Nowhere in the Alaska Constitution or AS 15.45.090 does Alaska law permit a lieutenant governor to deny certification but issue petitions to collect signatures from Alaskans across the state.

Yet, the State Defendants recently agreed to a stipulation in a lawsuit captioned *Alaskans For Better Elections v. Kevin Meyer et al.*, 3AN-19-09704 CI that did precisely that: makes the signature petition booklets available to initiative proponents **before** Lieutenant Governor Kevin Meyer certified that the initiative was “in proper form,” as required by Article XI, Section 3 and AS 15.45.090.⁸ “Defendants agree to send 19AKBE signature petition booklets to the printers on September 9, 2019 with the goal of making them available to the Plaintiff by September 23, 2019.”⁹ This conduct by State Defendants

ordered him to certify the initiative and provide petition books to Trust the People.”).

⁶ Article XI, Section 3 of the Alaska Constitution (emphasis added).

⁷ AS 15.45.090(a) (emphasis added).

⁸ See Stipulation, at paragraph 2 (September 10, 2019) in 3AN-19-09704 CI, attached as **Exhibit A**.

⁹ *Id.*

is unconstitutional and illegal. State Defendants cannot violate the Alaska Constitution out of litigation convenience or for any other reason.

Therefore, Plaintiff Young respectfully asks this Court to enjoin State Defendants from violating Article XI, Section 3 of the Alaska Constitution by issuing petition booklets **before** the lieutenant governor certifies that 19AKBE is in proper form.

II. FACTUAL BACKGROUND

The facts relevant to this dispute are minimal. On July 3, 2019, former State House Representative Jason Grenn submitted an initiative application entitled:

An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of "political party."¹⁰

Alaska Lieutenant Governor Kevin Meyer denied the initiative application “19AKBE” because it was submitted for certification in 2019, and the proponents of the initiative had named themselves “Alaskans For Better Elections.”

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¹⁰ See 19AKBE – TheBill.PDF Submitted by Initiative Proponents, at 1, attached as **Exhibit B** (available online at: <http://www.elections.alaska.gov/petitions/19AKBE/19AKBE-TheBill.pdf>).

Upon receiving the initiative application, Lieutenant Governor Meyer “forwarded the application to the Division of Elections for verification of signatures and to the Department of Law for legal review.”¹¹ On August 30, 2019, Lieutenant Governor Meyer issued his decision on the initiative application.¹² As to the requirement that the application be submitted with 100 qualified Alaskan voters, Lieutenant Governor Meyer stated: “The Division of Elections determined that 159 out of the 162 signatures submitted were those of qualified votes. Therefore, the application has sufficient number of sponsors to qualify for circulation of a petition under AS 15.45.030.”¹³ As to whether the application was “in proper form,” Lieutenant Governor Meyer reasoned that it was not, based on the Department of Law’s review of 19AKBE:

The Department of Law reviewed the application for compliance with AS 15.45.040 and recommends that I decline to certify this initiative on the grounds that the bill violates the single-subject rule. Based on this recommendation, and in accordance with AS 15.45.080, I am denying certification of your initiative application. A copy of the Department of Law opinion dated August 29, 2019 regarding the application is enclosed.¹⁴

He also advised the initiative proponents of their right to seek superior court review of his decision within 30 days.¹⁵ The Department of Law’s 18-page analysis of the 19AKBE application concluded:

¹¹ Letter from Lt. Gov. Kevin Meyer to Jason Grenn (Aug. 30, 2019), attached as **Exhibit C** (available online at: <http://www.elections.alaska.gov/petitions/19AKBE/19AKBE-AppDecisionSponsor.pdf>).

¹² See **Exhibit C**.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

The single-subject rule serves an important constitutional purpose in the initiative context by protecting voters' ability to have their voices heard. But 19AKBE, if certified, would force voters into an all or nothing approach on multiple important policy choices, all of which implicate their fundamental constitutional rights in different ways. Because we conclude that the initiative bill violates the single-subject rule, we recommend that you decline to certify the initiative application.¹⁶

Shortly after Lieutenant Governor Meyer's decision declining to certify 19AKBE, Alaskans For Better Elections filed for superior court review of the lieutenant governor's decision that 19AKBE was not in proper form. Plaintiff Alaskans For Better Elections sued Defendants Lieutenant Governor Meyer and the State of Alaska's Division of Elections, which is headed by Director Gail Fenumiai, in Case No. 3AN-19-09704 CI (the "Initiative Application Certification Litigation").¹⁷

On September 9, 2019, Plaintiff Alaskans For Better Elections in the Initiative Application Certification Litigation filed a Stipulation signed by the Defendants in that case that contained, among other things, the following agreement:

Defendants agree to send 19AKBE signature booklets to the printers on September 9, 2019 with the goal of making them available to the Plaintiff by September 23, 2019.¹⁸

It is this provision of the Stipulation in the Initiative Application Certification Litigation that Plaintiff Young seeks to enjoin, as it is plainly unconstitutional.

¹⁶ See Attorney General Kevin Clarkson's Review of 19AKBE, at 18 (Aug. 29, 2019), attached as **Exhibit D** (available online at: <http://www.elections.alaska.gov/petitions/19AKBE/19AKBE-DOLR.pdf>).

¹⁷ See **Exhibit A**.

¹⁸ *Id.* at Paragraph 2.

III. DISCUSSION

Plaintiff Young seeks a temporary restraining order and preliminary injunction under Alaska Civil Rule 65(b). The Alaska Supreme Court has adopted two different tests for determining whether preliminary injunctive relief should be granted under Civil Rule 65(b). “A plaintiff may obtain a preliminary injunction by meeting either the balance of the hardships or the probable success on the merits standard.”¹⁹

Under the balance-of-the-hardships standard, the court is to balance “the harm the plaintiff will suffer without the injunction against the harm of the injunction will impose on the defendant.”²⁰ A preliminary injunction is warranted under that standard when three factors are present: “(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit.”²¹

Under the probable-success-on-the-merits standard, a preliminary injunction is warranted when plaintiff’s threatened harm is less than irreparable or if the opposing party cannot be adequately protected, but the plaintiff makes a “clear showing of probable success on the merits.”²²

¹⁹ *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

²⁰ *Id.*

²¹ *Id.* (internal quotation marks omitted).

²² *Division of Elections v. Metcalfe*, 110 P.3d 976, 978-79 (Alaska 2005) (quoting *State v. Kluti Kaah Native Vill. of Copper Center*, 831 P.2d 1270, 1272 (Alaska 1992) in turn quoting *A.J. Indus., Inc. v. Alaska Public Serv. Commission*, 470 P.2d 537, 540 (Alaska 1970) modified in other respects, 483 P.2d 198 (Alaska 1971)).

The Court's decision on whether a party has made the requisite showing for the issuance of preliminary injunctive relief is reviewed under the abuse of discretion standard.²³ Reversal under this "deferential" standard is warranted "only when, after reviewing the whole record, we are left with a definite and firm conviction that the superior court erred."²⁴

As demonstrated below, Plaintiff Young is entitled to an injunction under either the balance-of-the-hardships or the probable-success-on-the-merits standard.

A. Plaintiff Young Faces Irreparable Harm Absent Injunctive Relief Requiring the State Defendants To Follow the Alaska Constitution And Alaska Statutes.

Because the injury to Plaintiff Young's interest in the State complying with the Alaska Constitution and statutes cannot be reasonably measured by a pecuniary standard, he faces irreparable injury absent immediate injunctive relief.

The Alaska Supreme Court has defined "irreparable" injury as follows:

"Irreparable injury" includes an injury, whether great or small, which ought not be submitted to, on the one hand, or inflicted on the other; and which, because it is so large or so small, or is of such constant or frequent occurrence, or because no certain pecuniary standard exists for measurement of damages, cannot receive reasonable redress in a court of law.²⁵

In determining whether irreparable injury exists, the Alaska Supreme Court has ruled that "a court is to assume the plaintiff will ultimately prevail when assessing the irreparable

²³ See *id.*

²⁴ *Lee v. State*, 141 P.3d 342, 346 (Alaska 2006).

²⁵ *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 n. 5 (Alaska 1992)

harm” to the plaintiff absent and injunction.²⁶ Here, assuming as this Court must that Plaintiff Young is correct that Article XI, Section 3 and AS 15.45.090(a) require the certification of a petition application **before** issuance of the petition booklet, he easily meets the requirement of showing irreparable injury absent immediate injunctive relief.

The Alaska Supreme Court’s decisions on enjoining the State from enforcing its laws confirm that the State’s willful violation of Alaska law is precisely the type of injury where “no certain pecuniary standard exists for measurement of damages,” and therefore a court award of damages will not redress the wrong. In other words, allowing the State to willfully ignore the Alaska Constitution and Alaska statutes on the process for issuance of initiative petitions is not the type of harm that can be remedied by an award of damages at the end of the case. It is the type of injury that must be enjoined or the damage is irreparable.

State of Alaska, Division of Elections v. Metcalf stands for this proposition, although it involves the State appealing an injunction that prevented them from enforcing state law, whereas, here, the State Defendants agreed to violate Alaska law. In *Metcalf*, then-Superior Court Judge Morgan Christen issued a preliminary injunction requiring the Division of Elections to put third-party candidate for U.S. Senate Ray Metcalf on the statewide ballot.²⁷ Then-Judge Christen applied the balance-of-the-hardships test, and concluded that the State’s interests could be adequately protected because “the dispute

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²⁶ *Alsworth v. Seybert*, 323 P.3d 47,54 (Alaska 2014).

²⁷ *State v. Metcalf*, 110 P.3d 976, 977 (Alaska 2005).

could be resolved before the general election ballots were to be printed.”²⁸ The Alaska Supreme Court rejected this reasoning because it “ignores the state’s interest in the consistent administration of elections according to a considered statutory scheme.”²⁹ The *Metcalf* Court continued:

Here, a preliminary injunction will prevent the state from administering an election pursuant to its own election laws. As discussed below, these laws exist to further a legitimate state goal---to require a political group to first demonstrate some political support before compelling the state to recognize it as a political party and bestow upon it the benefits concomitant with recognition. This interest cannot be guaranteed by a bond, nor is it slight when compared to Metcalf’s interests; issuance of this injunction is a zero-sum event, where one party will invariably see unmitigated harm to its interests. Accordingly, we require Metcalf to demonstrate a clear showing of probable success on the merits.

Metcalf’s reasoning of why a bond could not adequately protect the State’s interest in following Alaska law is a textbook example of irreparable injury because the public’s interest in the rule of law cannot be measured on any pecuniary scale.

Likewise, in *State v. Kluti Kaah Native Village of Copper Center*,³⁰ the Alaska Supreme Court reversed a superior court that had inadequately weighed the State’s interest in following its own laws. In that case, a federally-recognized Indian tribe sued to enjoin the State from enforcing its rules regarding moose hunts in the Copper Center area.³¹ The superior court reasoned any damage to the State caused by enjoining the enforcement of

²⁸ *Id.* at n. 11.

²⁹ *Id.*

³⁰ 831 P.2d 1270 (Alaska 1992).

³¹ *Id.* at 1271.

the moose-hunting regulations was *de minimus* because the tribe sought only 40 moose total.³² The Alaska Supreme Court rejected this reasoning because it failed to consider the State's interest in enforcing its own rules to protect the resource *and other subsistence users.*³³

Here, the same logic applies and, assuming as this Court must under this prong³⁴ that Plaintiff Young is correct that the Alaska Constitution and statute prohibit the issuance of petition signature booklets **before** the lieutenant governor certifies that a petition application is in proper form, he will suffer irreparable harm absent an injunction. As *Kluti Kaah* and *Metcalf* make clear, the State's failure to follow Alaska law cannot be remedied with a monetary award or by a bond. Plaintiff Young's affidavit explains that he has been a resident of Alaska for nearly 30 years, is a registered voter, and is a precinct leader for the Republican Party in his District. Like the State in *Kluti Kaah* and *Metcalf*, Plaintiff Young has an interest in ensuring that the State is not prevented "from administering an election pursuant to its own laws."³⁵ Indeed, Plaintiff Young states:

The Division of Elections' actions in agreeing and preparing to issue the signature booklets in a manner that violates the Constitution is unfair to me and all other voters. This action will create confusion; it will set bad precedent; and it will lead the State down a slippery slope where the state government may feel free to ignore other terms of our Constitution.³⁶

³² *Id.* at 1273.

³³ *Id.* at 1273.

³⁴ *Alsworth*, 323 P.3d at 54 ("[A] court is to assume the plaintiff will ultimately prevail when assessing the irreparable harm to the plaintiff absent an injunction . . .").

³⁵ *Metcalf*, 110 P.3d at 979.

³⁶ Aff. of H. Young, paragraph 6 (September 18, 2019).

This Court should conclude that Plaintiff Young has shown irreparable harm absent immediate injunctive relief.

B. State Defendants are Adequately Protected Against this Court's Issuance of a Wrongful Injunction.

The proper inquiry under this prong of the balance of the hardships test for an injunction is “whether, assuming the defendant will ultimately prevail, ‘the injury which results from the injunction can be indemnified by bond or is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted.’”³⁷

Here, any injury to State Defendants resulting from an injunction is far outweighed by the injury facing Plaintiff Young, Alaskan citizens and the State. Plaintiff Young is merely seeking with this request for injunctive relief to return this matter to the status quo of having the legality of a ballot application be decided **before** the lieutenant governor issues the petition booklets to gather signatures.

In other words, this is a case where the injury which will result from the injunction “is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted.”³⁸ While the State Defendants’ issuance of the petition booklets will be delayed, granting the injunction will not jeopardize issuance of

³⁷ *Alsworth v. Seybert*, 323 P.3d 47, 54-55 (Alaska 2014) (internal quotation marks and ellipses omitted) (quoting *State v. United Cook Inlet Drift Assn.*, 815 P.2d 378, 378-79 (Alaska 1991) in turn citing *A.J. Indus. Inc. v. Alaska Pub. Serv. Commn.*, 470 P.2d 537, 540 (Alaska 1970)).

³⁸ *Alsworth*, 323 P.3d at 54-55 (quoting *State v. United Cook Inlet Drift Assn.*, 815 P.3d 378-79 (Alaska 1991)).

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those booklets at a later date, which is the normal process that the Division of Elections has always followed.

C. Plaintiff Young's Showing that He Will Almost Assuredly Succeed in Showing That the Alaska Constitution and Alaska Statute Preclude Issuance of Initiative Petitions for Signature Gathering Before the Lieutenant Governor Certifies the Application is "in Proper Form" Easily Satisfies the "Probable Success on the Merits" Standard and the Lower "Serious and Substantial Questions" Standard.

To satisfy the "probable success on the merits standard," (which by necessity encompasses the lower "serious and substantial questions standard") Plaintiff Young must show that State Defendants are acting contrary to the Alaska Constitution by stipulating to issue petition booklets prior to the lieutenant governor's certification that the petition application is "in proper form." That is an easy threshold to meet given the plain language of the Alaska Constitution and AS 15.45.090(a).

Article XI, Section 2 provides in full:

An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form, he shall so certify. Denial of certification shall be subject to judicial review.

Article XI, Section 3 provides in full:

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters who are equal in number to at least ten percent of those who voted in the preceding general election, who are resident in at least three-fourths of the house districts of the State, and who, in each of those house districts, are equal in number to at least seven

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percent of those who voted in the preceding general election in the house district, it may be filed with the lieutenant governor.

Likewise AS 15.45.090(a) provides in relevant part:

If the application is certified, the lieutenant governor shall prepare a sufficient number of sequentially numbered petitions to allow full circulation throughout the state.

Article XI, Sections 2 and 3 and AS 15.45.090(a) clearly contemplate the lieutenant governor's certification of an initiative application **before** issuance of the petition booklets.

Article XI, Section 2 starts the detailed initiative process contained in the Alaska Constitution, and makes clear that the lieutenant governor shall certify an initiative application that is "in proper form." It also makes clear that if the lieutenant governor does not find it in proper form, he is not to certify it, and the proponents may seek judicial review of that decision in the superior court. Article XI, Section 3 begins by stating that the lieutenant governor shall issue the petition booklets "**after** certification of the application."³⁹ Again, this provision requires the lieutenant governor to certify the initiative application *prior to* issuing petition booklets. AS 15.45.090(a) contemplates the same thing by qualifying that petition booklets be issued "**[i]f** the application is certified."⁴⁰

As Article XI, Sections 3 and 4 and AS 15.45.090(a) clearly contemplate the lieutenant governor's certification of an initiative application before he is to issue petition

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³⁹ Emphasis added.

⁴⁰ Emphasis added.

booklets, Plaintiff Young has demonstrated that he will probably succeed on the merits of this lawsuit.

D. Scope of TRO and Preliminary Injunctive Relief

Plaintiff Young asks for immediate injunctive relief in the form of a temporary restraining order upon the Court's review of this motion. Plaintiff's counsel is providing a copy of all of the filings to State Defendants via email contemporaneously with filing them at the Anchorage Superior Court. A TRO prohibiting the State Defendants from providing any printed initiative booklets to the proponents of the 19AKBE initiative until the Court can set a hearing on Plaintiff Young's request for preliminary injunctive relief can be heard, will maintain the status quo. Moreover, that immediate TRO relief would not require State Defendants to do anything contrary to the plain terms of their Stipulation with the proponents in the Initiative Application Certification Litigation. Under the terms of the Stipulation, State Defendants only agreed to strive for making the petition booklets available to Plaintiff by September 23, 2019.⁴¹

The need for an immediate TRO is made apparent by the terms of the State Defendants' agreement with the proponents of the 19AKBE initiative with petition booklets in a matter of days. If this is allowed to occur, State Defendants will have willfully violated Article XI, Section 3 and AS 15.45.090(a), and harmed every Alaskan citizen,

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⁴¹ **Exhibit A.**

including Plaintiff Young's, who have a legitimate interest in the State administering its elections "pursuant to [the State's] own election laws."⁴²

The Stipulation in the Initiative Application Certification Litigation states:

Defendants [the State Defendants in this lawsuit] agree to send the 19AKBE signature petition booklets to the printers on September 9, 2019 with the goal of making them available to the Plaintiff [the proponents of the 19AKBE initiative] by September 23, 2019.

This Court can only prevent the State Defendants' violation of Article XI, Section 3 and AS 15.45.090(a) by issuing the following orders:

- An immediate Temporary Restraining Order, issued on September 18, 2019 prohibiting State Defendants from providing printed booklets to the proponents of the 19AKBE initiative proponents until the Court has held a hearing on Plaintiff Young's request for a preliminary injunction. This injunctive relief does not impinge on any deadlines set by the State Defendants' Stipulation in the Initiative Application Certification Litigation, as that agreement merely requires State Defendants to strive to produce those printed booklets by September 23, 2019.
- Order setting a hearing on Plaintiff Young's request for preliminary injunctive relief to be held on September 23, 2019, or as soon thereafter as the Court is able.

Plaintiff Young respectfully requests the Court enter the requested injunctive relief to maintain the status quo, and to prevent the State Defendants' willful violation of the election laws provided by Alaska's Constitution and AS 15.45.090(a).

IV. CONCLUSION

For the reasons stated above, Plaintiff Young respectfully requests that this Court enter an immediate TRO relief and set a hearing on his motion for preliminary injunctive relief.

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⁴² *Metcalf*, 110 P.3d at 979.

DATED at Anchorage, Alaska this 18th day of September, 2019.

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MEMORANDUM IN SUPPORT OF MOTION FOR TRO AND PRELIMINARY INJUNCTION
YOUNG V. MEYER, FENUMIAI, ET AL.
CASE NO. 3AN-19-_____ CI

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS,)
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KEVIN MEYER, LIEUTENANT)
GOVERNOR OF THE STATE OF)
ALASKA and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)
)
Defendants.)
)
) Case No. 3AN-19-09704 CI

STIPULATION \

Plaintiff and Defendants, by and through counsel, hereby agree, and request that the court approve, the following stipulated order:

- 1) Plaintiff has reviewed and does not object to the Division of Election's summary for the Alaska Better Elections Initiative ("19AKBE") that will accompany the petition booklets under AS 15.45.090(2).

- 2) Defendants agree to send the 19AKBE signature petition booklets to the printers on September 9, 2019 with the goal of making them available to the Plaintiff by September 23, 2019.
- 3) Plaintiff acknowledges that the Defendants are willing to move forward prior to the merits of the case being decided because application of the single-subject rule is the only disputed issue in the case, which applies to an initiative as a whole. Plaintiff also agrees to post a bond in the amount of \$1,500.00 to cover the costs of the petition booklets.
- 4) The parties anticipate an appeal to the Alaska Supreme Court, regardless of the court's decision. In order to promptly decide the legal issues of the case and provide sufficient time for consideration by the Alaska Supreme Court prior to next year's election season, the parties have agreed to the following briefing schedule and request for an expedited decision:
 - a. September 30, 2019 both parties file Cross-Motions for Summary Judgment;
 - b. October 21, 2019 both parties file Responses to the Cross-Motions;
 - c. Oral argument is requested for the week of October 28;
 - d. An expedited decision from the court is requested by December 1, 2019.

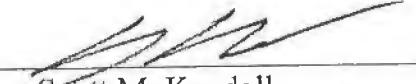
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Date:

9/9/19

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Plaintiff

By:


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9/9/19

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Attorneys for Defendants

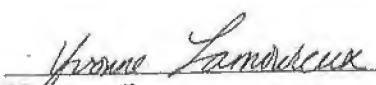
By:


Cori Mills
for: Alaska Bar No.1212140
Margaret Paton-Walsh
Alaska Bar No. 0411074

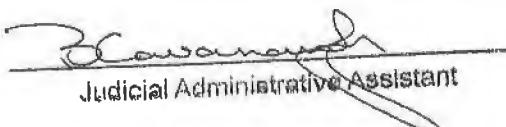
ORDER

Having considered the proposed stipulated order, IT IS SO ORDERED that the stipulation is approved. Oral argument will occur at 9:00 am/pm on Nov. 1, 2019 in Courtroom 301.

DATED at Anchorage, Alaska this 10th day of September, 2019.


Yvonne Lamoureux
Superior Court Judge

I certify that on 9-10-19
a copy was mailed to each of the following
at their address of record: S. Lindemuth/s. Kendall,
C.mills/m. Paton.Walsh


Judith Administrative Assistant

ALASKA'S BETTER ELECTIONS INITIATIVE

AN INITIATIVE TO:

PROHIBIT THE USE OF DARK MONEY BY INDEPENDENT EXPENDITURE GROUPS WORKING TO INFLUENCE CANDIDATE ELECTIONS IN ALASKA AND REQUIRE ADDITIONAL DISCLOSURES BY THESE GROUPS; ESTABLISH A NONPARTISAN AND OPEN TOP FOUR PRIMARY ELECTION SYSTEM; CHANGE APPOINTMENT PROCEDURES FOR CERTAIN ELECTION BOARDS AND WATCHERS AND THE ALASKA PUBLIC OFFICES COMMISSION; ESTABLISH A RANKED-CHOICE GENERAL ELECTION SYSTEM; SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO ALLOW CITIZENS TO REGULATE MONEY IN ELECTIONS; REPEAL SPECIAL RUNOFF ELECTIONS; REQUIRE CERTAIN NOTICES IN ELECTION PAMPHLETS AND POLLING PLACES; AND AMEND THE DEFINITION OF POLITICAL PARTY.

A BILL BY INITIATIVE For an Act Entitled

"An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

***Section 1.** The uncodified law of the State of Alaska is amended by adding a section to read: FINDINGS AND INTENT. The People of the State of Alaska find:

- (1) It is in the public interest of Alaska to improve the electoral process by increasing transparency, participation, access, and choice.
- (2) The people of Alaska hold that political power and influence should not be allocated based on wealth. Instead, reasonable limits on the role of money in elections are necessary to secure the equal rights of Alaskans and to protect the integrity of Alaska elections. Several rulings of the United States Supreme Court have erroneously changed the meaning of the First Amendment to the United States Constitution so as to empower unlimited spending as "free speech" without proper consideration of factors such as the danger of corruption and the undermining of self-governance in Alaska by the undue influence of wealth, including from outside the state. These mistaken Supreme Court decisions have invalidated longstanding anti-corruption laws in Alaska. Alaska shall now affirm the rights and powers of its citizens by prohibiting the use of

ALASKA'S BETTER ELECTIONS INITIATIVE

dark money in its candidate elections and by supporting an amendment to the United States Constitution allowing citizens to regulate the raising and spending of money in elections.

- (3) The people of Alaska have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence candidate elections in Alaska. This right requires the prompt, accessible, comprehensible, and public disclosure of the true and original sources of funds used to influence these elections, and is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly.
- (4) It is in the public interest of Alaska to adopt a primary election system that is open and nonpartisan, which will generate more qualified and competitive candidates for elected office, boost voter turnout, better reflect the will of the electorate, reward cooperation, and reduce partisanship among elected officials.
- (5) It is in the public interest of Alaska to adopt a general election system that reflects the core democratic principle of majority rule. A ranked-choice voting system will help ensure that the values of elected officials more broadly reflect the values of the electorate, mitigate the likelihood that a candidate who is disapproved by a majority of voters will get elected, encourage candidates to appeal to a broader section of the electorate, allow Alaskans to vote for the candidates that most accurately reflect their values without risking the election of those candidates that least accurately reflect their values, encourage greater third-party and independent participation in elections, and provide a stronger mandate for winning candidates.

***Sec. 2.** AS 15.10.120(c) is amended to read:

(c) An election supervisor shall appoint one nominee of the political party or political group with the largest number of registered voters at the time of the preceding gubernatorial election [OF WHICH THE GOVERNOR IS A MEMBER] and one nominee of the political party or political group with [THAT RECEIVED] the second largest number of registered voters at the time of [VOTES STATEWIDE IN] the preceding gubernatorial election. However, the election supervisor may appoint a qualified person registered as a member of a third political party or political group or as a nonpartisan or undeclared voter if [IF] a party district committee or state party central committee of the party or group with the largest number of registered voters [OF WHICH THE GOVERNOR IS A MEMBER] or the party or group with [THAT RECEIVED] the second largest number of registered voters at the time of [VOTES STATEWIDE IN] the preceding gubernatorial election fails to present the names prescribed by (b) of this section by April 15 of a regular election year or at least 60 days before a special primary election [, THE ELECTION SUPERVISOR MAY APPOINT ANY QUALIFIED INDIVIDUAL REGISTERED TO VOTE].

***Sec. 3.** AS 15.10.170 is amended to read:

Sec. 15.10.170. Appointment and privileges of watchers. (a) The precinct party committee, where an organized precinct committee exists, or the party district committee where no organized precinct committee exists, or the state party chairperson where neither a precinct nor a party district committee exists, may appoint one or more persons as watchers in each precinct and counting center for any election. Each candidate [NOT REPRESENTING A POLITICAL PARTY] may appoint one or more watchers for each precinct or counting center in the

ALASKA'S BETTER ELECTIONS INITIATIVE

candidate's respective district or the state for any election. Any organization or organized group that sponsors or opposes an initiative, referendum, or recall may have one or more persons as watchers at the polls and counting centers after first obtaining authorization from the director. A state party chairperson, a precinct party committee, a party district committee, or a candidate [NOT REPRESENTING A POLITICAL PARTY OR ORGANIZATION OR ORGANIZED GROUP] may not have more than one watcher on duty at a time in any precinct or counting center. A watcher must be a United States citizen. The watcher may be present at a position inside the place of voting or counting that affords a full view of all action of the election officials taken from the time the polls are opened until the ballots are finally counted and the results certified by the election board or the data processing review board. The election board or the data processing review board may require each watcher to present written proof showing appointment by the precinct party committee, the party district committee, the organization or organized group, or the candidate the watcher represents [THAT IS SIGNED BY THE CHAIRPERSON OF THE PRECINCT PARTY COMMITTEE, THE PARTY DISTRICT COMMITTEE, THE STATE PARTY CHAIRPERSON, THE ORGANIZATION OR ORGANIZED GROUP, OR THE CANDIDATE REPRESENTING NO PARTY].

(b) In addition to the watchers appointed under (a) of this section, in a primary election or [,] special primary election or special election under AS 15.40.140, [OR SPECIAL RUNOFF ELECTION UNDER AS15.40.141,] each candidate may appoint one watcher in each precinct and counting center.

***Sec. 4.** AS 15.13.020(b) is amended to read:

(b) The governor shall appoint two members of each of the two political parties or political groups with the largest number of registered voters at the time of [WHOSE CANDIDATE FOR GOVERNOR RECEIVED THE HIGHEST NUMBER OF VOTES IN] the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties or groups shall be chosen from a list of four names to be submitted by the central committee of each party or group.

***Sec. 5.** AS 15.13.020(d) is amended to read:

(d) Members of the commission serve staggered terms of five years, or until a successor is appointed and qualifies. The terms of no two members who are members of the same political party or political group may expire in consecutive years. A member may not serve more than one term. However, a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term.

***Sec. 6.** AS 15.13.040(j)(3) is amended to read:

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor, [AND] for all contributions described in (2) of this subsection in excess of \$250 in the aggregate during a calendar year, the principal occupation and employer of the contributor, and for all contributions described in (2) of this subsection in excess of \$2,000 in the aggregate during a calendar year, the true source of such contributions and all intermediaries, if any, who transferred such funds, and a certification from the treasurer that the report discloses all of the information required by this paragraph.

ALASKA'S BETTER ELECTIONS INITIATIVE

***Sec. 7.** AS 15.13.040 is amended by adding a new subsection to read:

(s) Every individual, person, nongroup entity, or group that contributes more than \$2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.

***Sec. 8.** AS 15.13.070 is amended by adding a new subsection to read:

(g) Where contributions are made to a joint campaign for governor and lieutenant governor,

- (1) An individual may contribute not more than \$1,000 per year; and
- (2) A group may contribute not more than \$2,000 per year.

***Sec. 9.** AS 15.13.074(b) is amended to read:

(b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another. Individuals, persons, nongroup entities, or groups subject to AS 15.13.040(s) may not contribute or accept \$2,000 or more of dark money as that term is defined in AS 15.13.400(17), and may not make a contribution while acting as an intermediary without disclosing the true source of the contribution as defined in AS 15.13.400(18).

***Sec. 10.** AS 15.13.074(c) is amended to read:

(c) A person or group may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

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(A) after the date of the primary or special primary election if the candidate was [ON THE BALLOT AND WAS] not chosen to appear on the general or special election ballot [NOMINATED] at the primary or special primary election; or

(B) after the date of the general or special election, or after the date of a municipal or municipal runoff election.

***Sec. 11.** AS 15.13.090(c) is amended to read:

(c) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication that includes a print or video component must have the following statement or statements placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the second statement is not required if the person paying for the communication has no contributors or is a political party:

This communication was paid for by (person's name and city and state of principal place of business). The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(C)).

***Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(g) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication paid for by an outside-funded entity as that term is defined in AS 15.13.400(19) that includes a print or video component must have the following statement placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the statement is not required if the outside entity paying for the communication has no contributors or is a political party: "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA."

***Sec. 13.** AS 15.13.110(f) is amended to read:

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) [A PERSON WHO HAS FILED A NOMINATING PETITION UNDER AS 15.25.140 - 15.25.200 TO BECOME A CANDIDATE AT THE GENERAL ELECTION FOR ELECTIVE STATE EXECUTIVE OR LEGISLATIVE OFFICE;

(3)] a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(3) [(4)] a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) or (2) [(1) - (3)] of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135(a).

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***Sec. 14.** AS 15.13.110 is amended by adding a new subsection to read:

(k) Once contributions from an individual, person, nongroup entity, or group to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle exceed \$2,000 in a single year, that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt. For purposes of this subsection, the entity is required to certify and report the true source, and all intermediaries if any, of the contribution as defined by AS 15.13.400(18).

***Sec. 15.** AS 15.13.390(a) is amended to read:

(1) A person who fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040, 15.13.060(b) — (d), 15.13.110(a)(1), (3), or (4), (e), or (f) is subject to a civil penalty of not more than \$50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(2) A person who, whether as a contributor or intermediary, delays in reporting a contribution as required by AS 15.13.040(s) is subject to a civil penalty of not more than \$1,000 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(3) A person who, whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution in violation of AS 15.13.040(s) or AS 15.13.074(b) is subject to a civil penalty of not more than the amount of the contribution that is the subject of the misreporting or failure to disclose. Upon a showing that the violation was intentional, a civil penalty of not more than three times the amount of the contribution in violation may be imposed. These penalties as determined by the commission are subject to right of appeal to the superior court;

(4) A person who violates a provision of this chapter, except [A PROVISION REQUIRING REGISTRATION OR FILING OF A REPORT WITHIN A TIME REQUIRED] as otherwise specified in this section, is subject to a civil penalty of not more than \$50 a day for each day the violation continues as determined by the commission, subject to right of appeal to the superior court[.]; and

(5) An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.380 does not excuse that person from registering or filing reports required by this chapter.

***Sec. 16.** AS 15.13.400(4) is amended to read:

(4) "contribution"

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- (A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party, and that is made for the purpose of
- (i) influencing the nomination or election of a candidate;
 - (ii) influencing a ballot proposition or question; or
 - (iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020;
- (B) does not include
- (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;
 - (ii) ordinary hospitality in a home;
 - (iii) two or fewer mass mailings before each election by each political party describing members of the party running as candidates for public office in that election [THE PARTY'S SLATE OF CANDIDATES FOR ELECTION], which may include photographs, biographies, and information about the [PARTY'S] candidates;
 - (iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;
 - (v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee;
 - (vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party; or
 - (vii) an opportunity to participate in a candidate forum provided to a candidate without compensation to the candidate by another person and for which a candidate is not ordinarily charged;

***Sec. 17.** AS 15.13.400 is amended by adding a new paragraph to read:

(17) "dark money" means a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.

***Sec. 18.** AS 15.13.400 is amended by adding a new paragraph to read:

(18) "true source" means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services. A person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source. Notwithstanding the foregoing, to

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the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.

***Sec. 19.** AS 15.13.400 is amended by adding a new paragraph to read:

(19) "outside-funded entity" means an entity that makes one or more independent expenditures in one or more candidate elections and that, during the previous 12-month period, received more than 50 percent of its aggregate contributions from true sources, or their equivalents, who, at the time of the contribution, resided or had their principal place of business outside Alaska.

***Sec. 20.** AS 15.15 is amended by adding a new section to read:

Sec. 15.15.005. Top four nonpartisan open primary. A voter qualified under AS 15.05 may cast a vote for any candidate for each elective state executive and state and national legislative office, without limitations based on the political party or political group affiliation of either the voter or the candidate.

***Sec. 21.** AS 15.15.030(5) is amended to read:

(5) The names of the candidates [AND THEIR PARTY DESIGNATIONS] shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated. If a candidate is registered as affiliated with a political party or political group, the [THE] party affiliation, if any, may [SHALL] be designated after the name of the candidate, upon request of the candidate. If a candidate has requested designation as nonpartisan or undeclared, that designation shall be placed after the name of the candidate. If a candidate is not registered as affiliated with a political party or political group and has not requested to be designated as nonpartisan or undeclared, the candidate shall be designated as undeclared. The lieutenant governor and the governor shall be included under the same section. Provision shall be made for voting for write-in [AND NO-PARTY] candidates within each section. Paper ballots for the state general election shall be printed on white paper.

***Sec. 22.** AS 15.15.030 is amended by adding new paragraphs to read:

(14) The director shall include the following statement on the ballot:

A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the political party or political group.

(15) Instead of the statement provided by (14) of this section, when candidates for President and Vice-President of the United States appear on a general election ballot, the director shall include the following statement on the ballot:

A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or political group or that the political party or political group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group. The election for President and Vice-President of the United States is different. Some candidates for President and Vice-President are the official nominees of their political party.

ALASKA'S BETTER ELECTIONS INITIATIVE

(16) The director shall design the general election ballots so that the candidates are selected by ranked-choice voting.

(17) The director shall design the general election ballot to direct the voter to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign the same ranking to more than one candidate for the same office.

***Sec. 23.** AS 15.15.060 is amended by adding a new subsection to read:

(e) In each polling place, the director shall require to be posted, in a location conspicuous to a person who will be voting, the following notice, written in bold:

A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group.

***Sec. 24.** AS 15.15.350 is amended by adding new subsections to read:

(c) All general elections shall be conducted by ranked-choice voting.

(d) When counting ballots in a general election, the election board shall initially tabulate each validly cast ballot as one vote for the highest-ranked continuing candidate on that ballot or as an inactive ballot. If a candidate is highest-ranked on more than one-half of the active ballots, that candidate is elected and the tabulation is complete. Otherwise, tabulation proceeds in sequential rounds as follows:

(1) if two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete; otherwise, the tabulation continues under (2) of this subsection;

(2) the candidate with the fewest votes is defeated, votes cast for the defeated candidate shall cease counting for the defeated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (g)(2) of this section, and a new round begins under (1) of this subsection.

(e) When counting general election ballots,

(1) a ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate;

(2) if a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot once the second skipped ranking is encountered; and

(3) In the event of a tie between the final two continuing candidates, the procedures in AS 15.15.460 and AS 15.20.430 - 15.20.530 shall apply to determine the winner of the general election. In the event of a tie between two candidates with the fewest votes, the tie shall be resolved by lot to determine which candidate is defeated.

(f) The election board may not count an inactive ballot for any candidate.

(g) In this section,

(1) "continuing candidate" means a candidate who has not been defeated;

(2) "inactive ballot" means a ballot that is no longer tabulated, either in whole or in part, by the division because it does not rank any continuing candidate, contains an

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overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking;

(3) "overvote" means an instance where a voter has assigned the same ranking to more than one candidate;

(4) "ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on;

(5) "round" means an instance of the sequence of voting tabulation in a general election;

(6) "skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.

***Sec. 25.** AS 15.15.360(a) is amended to read:

(a) The election board shall count ballots according to the following rules:

(1) A voter may mark a ballot only by filling in, making "X" marks, diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the oval opposite the name of the candidate, proposition, or question that the voter desires to designate. In a general election, a voter may mark a ballot that requires the voter to vote for candidates in order of ranked preference by the use of numerals that are clearly spaced in one of the ovals opposite the name of the candidate that the voter desires to designate.

(2) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.

(3) [IF A VOTER MARKS FEWER NAMES THAN THERE ARE PERSONS TO BE ELECTED TO THE OFFICE, A VOTE SHALL BE COUNTED FOR EACH CANDIDATE PROPERLY MARKED.]

(4) [(5)] The mark specified in (1) of this subsection shall be counted only if it is substantially inside the oval provided, or touching the oval so as to indicate clearly that the voter intended the particular oval to be designated.

(5) [(6)] Improper marks on the ballot may not be counted and do not invalidate marks for candidates properly made.

(6) [(7)] An erasure or correction invalidates only that section of the ballot in which it appears.

(7) [(8)] A vote marked for the candidate for President or Vice-President of the United States is considered and counted as a vote for the election of the presidential electors.

(9) [REPEALED]

(10) [REPEALED]

(11) [REPEALED]

(12) [REPEALED]

***Sec. 26.** AS 15.15.370 is amended to read:

Sec. 15.15.370. Completion of ballot count; certificate. When the count of ballots is completed, and in no event later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for

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each candidate, including, for a candidate in a general election, the number of votes at each round of the ranked-choice tabulation process under AS 15.15.350, and the number of votes for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone, telegram, or radio. The director may authorize the unofficial totaling of votes on a regional basis by election supervisors, tallying the votes as indicated on duplicate certificates. To ensure [ASSURE] adequate protection, the director shall prescribe the manner in which the ballots, registers, and all other election records and materials are thereafter preserved, transferred, and destroyed.

***Sec. 27.** AS 15.15.450 is amended to read:

Sec. 15.15.450. Certification of state ballot counting review. Upon completion of the state ballot counting review, the director shall certify the person receiving the largest number of votes for the office for which that person was nominated or elected, as applicable, [A CANDIDATE AS ELECTED TO THAT OFFICE] and shall certify the approval of a justice or judge not rejected by a majority of the voters voting on the question. The director shall issue to the elected candidates and approved justices and judges a certificate of their election or approval. The director shall also certify the results of a proposition and other question except that the lieutenant governor shall certify the results of an initiative, referendum, or constitutional amendment.

* **Sec. 28.** AS 15.20.081(a) is amended to read:

(a) A qualified voter may apply in person, by mail, or by facsimile, scanning, or other electronic transmission to the director for an absentee ballot under this section. Another individual may apply for an absentee ballot on behalf of a qualified voter if that individual is designated to act on behalf of the voter in a written general power of attorney or a written special power of attorney that authorizes the other individual to apply for an absentee ballot on behalf of the voter. The application must include the address or, if the application requests delivery of an absentee ballot by electronic transmission, the telephone electronic transmission number, to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. However, a person residing outside the United States and applying to vote absentee in federal elections in accordance with AS 15.05.011 need not include an Alaska residence address in the application. A person may supply to a voter an absentee ballot application form with a political party or group affiliation indicated only if the voter is already registered as affiliated with the political party or group indicated. [ONLY THE VOTER OR THE INDIVIDUAL DESIGNATED BY THE VOTER IN A WRITTEN POWER OF ATTORNEY UNDER THIS SUBSECTION MAY MARK THE VOTER'S CHOICE OF PRIMARY BALLOT ON AN

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APPLICATION. A PERSON SUPPLYING AN ABSENTEE BALLOT APPLICATION FORM MAY NOT DESIGN OR MARK THE APPLICATION IN A MANNER THAT SUGGESTS CHOICE OF ONE BALLOT OVER ANOTHER, EXCEPT THAT BALLOT CHOICES MAY BE LISTED ON AN APPLICATION AS AUTHORIZED BY THE DIVISION.] The application must be made on a form prescribed or approved by the director. The voter or registration official shall submit the application directly to the division of elections. For purposes of this subsection, "directly to the division of elections" means that an application may not be submitted to any intermediary that could control or delay the submission of the application to the division or gather data on the applicant from the application form. However, nothing in this subsection is intended to prohibit a voter from giving a completed absentee ballot application to a friend, relative, or associate for transfer to the United States Postal Service or a private commercial delivery service for delivery to the division.

***Sec. 29. AS 15.20.081(h)** is amended to read:

(h) Except as provided in AS 15.20.480, an absentee ballot returned by mail from outside the United States or from an overseas voter qualifying under AS 15.05.011 that has been marked and mailed not later than election day may not be counted unless the ballot is received by the election supervisor not later than the close of business on the

- (1) 10th day following a primary election or special primary election under AS 15.40.140; or
- (2) 15th day following a general election [, SPECIAL RUNOFF ELECTION,] or special election, other than a special primary election described in (1) of this subsection.

***Sec. 30. AS 15.20.190(a)** is amended to read:

(a) Thirty days before the date of an election, the election supervisors shall appoint, in the same manner provided for the appointment of election officials prescribed in AS 15.10, district absentee ballot counting boards and district questioned ballot counting boards, each composed of at least four members. At least one member of each board must be a member of the same political party or political group with the largest number of registered voters at the time of the preceding gubernatorial election [OF WHICH THE GOVERNOR IS A MEMBER], and at least one member of each board must be a member of the political party or political group with the second largest number of registered voters at the time of [WHOSE CANDIDATE FOR GOVERNOR RECEIVED THE SECOND LARGEST NUMBER OF VOTES IN] the preceding gubernatorial election. The district boards shall assist the election supervisors in counting the absentee and questioned ballots and shall receive the same compensation paid election officials under AS 15.15.380.

***Sec. 31. AS 15.20.203(i)** is amended to read:

- (i) The director shall mail the materials described in (h) of this section to the voter not later than
- (1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special primary election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

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(2) 60 days after certification of the results of a general election [,SPECIAL RUNOFF ELECTION,] or special election other than a special primary election described in (1) of this subsection.

***Sec. 32.** AS 15.20.203(j) is amended to read:

(j) The director shall make available through a free access system to each absentee voter a system to check to see whether the voter's ballot was counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special primary election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after certification of the results of a general or special election, other than a special primary election described in (1) of this subsection.

***Sec. 33.** AS 15.20.207(i) is amended to read:

(i) The director shall mail the materials described in (h) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special primary election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general or special election, other than a special primary election described in (1) of this subsection.

***Sec. 34.** AS 15.20.207(k) is amended to read:

(k) The director shall make available through a free access system to each voter voting a questioned ballot a system to check to see whether the voter's ballot was counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special primary election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after [THE] certification of the results of a general or special election, other than a special primary election described in (1) of this subsection.

***Sec. 35.** AS 15.20.211(d) is amended to read:

(d) The director shall mail the materials described in (c) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special primary election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general or special election, other than a special primary election described in (1) of this subsection.

***Sec. 36.** AS 15.20.211(f) is amended to read:

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(f) The director shall make available through a free access system to each voter whose ballot was subject to partial counting under this section a system to check to see whether the voter's ballot was partially counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [.] or a special primary election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after [THE] certification of the results of a general or special election, other than a special primary election described in (1) of this subsection.

***Sec. 37.** AS 15.25.010 is amended to read:

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. The primary election does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates whose names will appear on the ballot at the general election. Except as provided in AS 15.25.100(d), only the four candidates who receive the greatest number of votes for any office shall advance to the general election [THE DIRECTOR SHALL PREPARE AND PROVIDE A PRIMARY ELECTION BALLOT FOR EACH POLITICAL PARTY. A VOTER REGISTERED AS AFFILIATED WITH A POLITICAL PARTY MAY VOTE THAT PARTY'S BALLOT. A VOTER REGISTERED AS NONPARTISAN OR UNDECLARED RATHER THAN AS AFFILIATED WITH A PARTICULAR POLITICAL PARTY MAY VOTE THE POLITICAL PARTY BALLOT OF THE VOTER'S CHOICE UNLESS PROHIBITED FROM DOING SO UNDER AS 15.25.014. A VOTER REGISTERED AS AFFILIATED WITH A POLITICAL PARTY MAY NOT VOTE THE BALLOT OF A DIFFERENT POLITICAL PARTY UNLESS PERMITTED TO DO SO UNDER AS 15.25.014].

***Sec. 38.** AS 15.25.030(a) is amended to read:

(a) A person [MEMBER OF A POLITICAL PARTY] who seeks to become a candidate [OF THE PARTY] in the primary election or a special primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and must state in substance

(1) the full name of the candidate;

(2) the full mailing address of the candidate;

(3) if the candidacy is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(4) the office for which the candidate seeks nomination;

(5) the [NAME OF THE] political party or political group with whom the candidate is registered as affiliated, or whether the candidate would prefer a nonpartisan or undeclared designation placed after the candidate's name on the ballot [OF WHICH THE PERSON IS A CANDIDATE FOR NOMINATION];

(6) the full residence address of the candidate, and the date on which residency at that address began;

(7) the date of the primary election or special primary election at which the candidate seeks nomination;

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- (8) the length of residency in the state and in the district of the candidate;
 - (9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;
 - (10) that the candidate is a qualified voter as required by law;
 - (11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;
 - (12) that the candidate requests that the candidate's name be placed on the primary **or** special primary election ballot;
 - (13) that the required fee accompanies the declaration;
 - (14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;
 - (15) the manner in which the candidate wishes the candidate's name to appear on the ballot;
 - (16) if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly with the candidate for governor; and
 - (17) if the candidacy is for the office of lieutenant governor, the name of the candidate for governor running jointly with the candidate for lieutenant governor.
- [(16) THAT THE CANDIDATE IS REGISTERED TO VOTE AS A MEMBER OF THE POLITICAL PARTY WHOSE NOMINATION IS BEING SOUGHT].**

***Sec. 39.** AS 15.25.060 is repealed and reenacted to read:

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballots shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall prepare and provide a primary election ballot that contains all of the candidates for elective state executive and state and national legislative offices and all of the ballot titles and propositions required to appear on the ballot at the primary election. The director shall print the ballots on white paper and place the names of all candidates who have properly filed in groups according to offices. The order of the placement of the names for each office shall be as provided for the general election ballot. Blank spaces may not be provided on the ballot for the writing or pasting in of names.

***Sec. 40.** AS 15.25.100 is repealed and reenacted to read:

Sec. 15.25.100. Placement of candidates on general election ballot. (a) Except as provided in (b)-(g) of this section, of the names of candidates that appear on the primary

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election ballot under AS 15.25.010, the director shall place on the general election ballot only the names of the four candidates receiving the greatest number of votes for an office. For purposes of this subsection and (b) of this section, candidates for lieutenant governor and governor are treated as a single paired unit.

(b) If two candidates tie in having the fourth greatest number of votes for an office in the primary election, the director shall determine under (g) of this section which candidate's name shall appear on the general election ballot.

(c) Except as otherwise provided in (d) of this section, if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 days or more before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.

(d) If the withdrawn, resigned, deceased, disqualified, or incapacitated candidate was a candidate for governor or lieutenant governor, the replacement candidate is selected by the following process:

(1) if the withdrawn, resigned, deceased, disqualified, or incapacitated candidate was the candidate for governor, that candidate's lieutenant governor running mate becomes the candidate for governor, thereby creating a vacancy for the lieutenant governor candidate;

(2) when any vacancy for the lieutenant governor candidate occurs, the candidate for governor shall select a qualified running mate to be the lieutenant governor candidate and notify the director of that decision.

(e) The director shall place the name of the persons selected through this process as candidates for governor and lieutenant governor on the general election ballot.

(f) For a candidate to be certified as incapacitated under (c) of this section, a panel of three licensed physicians, not more than two of whom may be of the same party, shall provide the director with a sworn statement that the candidate is physically or mentally incapacitated to an extent that would, in the panel's judgment, prevent the candidate from active service during the term of office if elected.

(g) If the director is unable to make a determination under this section because the candidates received an equal number of votes, the determination may be made by lot under AS 15.20.530.

***Sec. 41. AS 15.25.105(a)** is amended to read:

(a) If a candidate does not appear on the primary election ballot or is not successful in advancing to the general election and wishes to be a candidate in the general election, the candidate may file as a write-in candidate. Votes for a write-in candidate may not be counted unless that candidate has filed a letter of intent with the director stating

(1) the full name of the candidate;

(2) the full residence address of the candidate and the date on which residency at that address began;

(3) the full mailing address of the candidate;

(4) the [NAME OF THE] political party or political group with whom the candidate is registered as affiliated, or whether the candidate would prefer a

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nonpartisan or undeclared designation, [OF WHICH THE CANDIDATE IS A MEMBER, IF ANY];

(5) if the candidate is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(6) the office that the candidate seeks;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the house district of the candidate;

(9) the name of the candidate as the candidate wishes it to be written on the ballot by the voter;

(10) that the candidate meets the specific citizenship requirements of the office for which the person is a candidate;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(12) that the candidate is a qualified voter as required by law; and

(13) that the candidate is not a candidate for any other office to be voted on at the general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy.

***Sec. 42. AS 15.25.105(b)** is amended to read:

(b) If a write-in candidate is running for the office of governor, the candidate must file a joint letter of intent together with a candidate for lieutenant governor. [BOTH CANDIDATES MUST BE OF THE SAME POLITICAL PARTY OR GROUP.]

***Sec. 43. AS 15.30.010** is amended to read:

Sec. 15.30.010. Provision for selection of electors. Electors of President and Vice President of the United States are selected by election at the general election in presidential election years[.] , in the manner and as determined by the ranked-choice method of tabulating votes described in AS 15.15.350—15.15.370.

***Sec. 44. AS 15.40.140** is amended to read:

Sec. 15.40.140. Condition of calling ~~special primary election and~~ special election.

When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special primary election to be held on a date not less

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than 60, nor more than 90, days after the date the vacancy occurs, to be followed by a special election on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election [UNDER AS 15.40.142(a)]. However, in an election year in which a candidate for that office is not regularly elected, if the vacancy occurs on a date that is not less than 60, nor more than 90, days before [OR IS ON OR AFTER] the date of

(1) the primary election, the [IN THE GENERAL ELECTION YEAR DURING WHICH A CANDIDATE TO FILL THE OFFICE IS REGULARLY ELECTED, THE GOVERNOR MAY NOT CALL A] special primary election shall be held on the date of the primary election with the subsequent special election to be held on the date of the general election; or

(2) the general election, the special primary election shall be held on the date of the general election with the subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary and general election.

***Sec. 45.** AS 15.40.160 is amended to read:

Sec. 15.40.160. Proclamation. The governor shall issue the proclamation calling the special primary election and special election at least 50 days before the

[(1)] special primary election [; AND

(2) IF A SPECIAL RUNOFF ELECTION IS REQUIRED UNDER AS 15.40.141(a), SPECIAL RUNOFF ELECTION].

***Sec. 46.** AS 15.40.165 is amended to read:

Sec. 15.40.165. Term of elected senator. At the special election, [OR, AS PROVIDED BY AS 15.40.141, AT THE SPECIAL RUNOFF ELECTION,] a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States Senate meets, convenes, or reconvenes following the certification of the results of the special election [OR SPECIAL RUNOFF ELECTION] by the director.

***Sec. 47.** AS 15.40.170 is amended to read:

Sec. 15.40.170. Term of elected representative. At the special election, [OR, AS PROVIDED BY AS 15.40.141, AT THE SPECIAL RUNOFF ELECTION,] a United States representative shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States house of representatives meets, convenes, or reconvenes following the certification of the results of the special election [OR SPECIAL RUNOFF ELECTION] by the director.

***Sec. 48.** AS 15.40.190 is amended to read:

Sec. 15.40.190. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates must be executed under oath, [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS OF THE STATE EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PRECEDING GENERAL ELECTION AND SHALL] state in substance that which is required for a declaration of candidacy

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under AS 15.25.030, and include the fee required under AS 15.25.050(a) [NOMINATION PETITIONS BY AS 15.25.180].

***Sec. 49.** AS 15.40.220 is amended to read:

Sec. 15.40.220. General provisions for conduct of the special primary election and special [RUNOFF] election. Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and [THE] special [RUNOFF] election of the United States senator or United States representative, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; [PROVISION FOR RUNNING AS, VOTING FOR, AND COUNTING BALLOTS FOR A WRITE-IN CANDIDATE;] provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 50.** AS 15.40.230 is amended to read:

Sec. 15.40.230. Condition and time of calling special primary election and special election. When a person appointed to succeed to the office of lieutenant governor succeeds to the office of acting governor, the acting governor shall, by proclamation, call a special primary election to be held on a date not less than 60, nor more than 90, days after the date the vacancy in the office of the governor occurred and a subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in years in which a governor is regularly elected, the acting governor shall serve the remainder of the unexpired term and may not call a special election.

***Sec. 51.** AS 15.40.240 is amended to read:

Sec. 15.40.240. Conditions for holding special primary election and special election with primary or general election. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election in an election year in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special primary election to be held on the date of the primary election and the special election to be held on the date of the general election. [IN YEARS IN WHICH A GOVERNOR IS REGULARLY ELECTED] or, if the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the [PRIMARY ELECTION OR] general election in election years in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special primary election to be held on the date of the [PRIMARY ELECTION OR] general election with the subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary and general election.

***Sec. 52.** AS 15.40.250 is amended to read:

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Sec. 15.40.250. Proclamation of special primary election and special election. The acting governor shall issue the proclamation calling the special primary election and special election at least 50 days before the special primary election.

***Sec. 53.** AS 15.40.280 is amended to read:

Sec. 15.40.280. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates must be executed under oath, [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS OF THE STATE EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PRECEDING GENERAL ELECTION, SHALL INCLUDE NOMINEES FOR THE OFFICE OF GOVERNOR AND LIEUTENANT GOVERNOR, AND SHALL] state in substance that which is required for a declaration of candidacy under AS 15.25.030, and include the fee required under AS 15.25.050(a) [NOMINATION PETITIONS BY AS 15.25.180].

***Sec. 54.** AS 15.40.310 is amended to read:

Sec. 15.40.310. General provisions for conduct of the special primary election and special election. Unless specifically provided otherwise, all provisions regarding the conduct of the primary and general election shall govern the conduct of the special primary election and special election of the governor and lieutenant governor, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 55.** AS 15.40.330 is amended to read:

Sec. 15.40.330. Qualification and confirmation of appointee. (a) The appointee shall meet the qualifications of a member of the legislature as prescribed in Sec. 2, art. II, of the state constitution, and, if the predecessor in office was a member of a political party or political group at the time of the vacancy, (1) shall be a member of the same political party or political group as [THAT WHICH NOMINATED] the predecessor in office; [,] and (2) shall be subject to confirmation by a majority of the members of the legislature who are members of the same political party or political group as [WHICH NOMINATED] the predecessor in office and of the same house as was the predecessor in office. If the predecessor in office was not a member of [NOMINATED BY] a political party or political group at the time of the vacancy or, if no other member of the predecessor's political party or political group is a member of the predecessor's house of the legislature, the governor may appoint any qualified person. If the appointee is not a member of a political party or political group, as provided in (b) of this section, the appointment is not subject to confirmation. If the appointee is a member of a political party or political group, the appointment is subject to confirmation as provided by (b) of this section for the confirmation of political party or political group appointees.

(b) A member of a political party or political group is a person who supports the political program of a political party or political group. The absence of a political party or political group designation after a candidate's name on an election ballot [FILING FOR OFFICE OF A

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CANDIDATE AS AN INDEPENDENT OR NO-PARTY CANDIDATE] does not preclude a candidate from being a member of a political party or political group. Recognition of a [AN INDEPENDENT OR NO-PARTY] candidate as a member of a political party or political group caucus of members of the legislature at the legislative session following the election of the [INDEPENDENT OR NO-PARTY] candidate is recognition of that person's political party or political group membership for the purposes of confirmation under this section [AT THE TIME FILINGS WERE MADE BY PARTY CANDIDATES FOR THE PRECEDING GENERAL ELECTION].

***Sec. 56.** AS 15.40.380 is amended to read:

Sec. 15.40.380. Conditions for part-term senate appointment and special election. If the vacancy is for an unexpired senate term of more than two years and five full calendar months, the governor shall call a special primary election and a special election by proclamation, and the appointment shall expire on the date the state senate first convenes or reconvenes following the certification of the results of the special election by the director.

***Sec. 57.** AS 15.40.390 is amended to read:

Sec. 15.40.390. Date of special primary election and special election. The special primary election to fill a vacancy in the state senate shall be held on the date of the first primary [GENERAL] election held more than 60 days [THREE FULL CALENDAR MONTHS] after the senate vacancy occurs, and the special election shall be held on the date of the first general election thereafter.

***Sec. 58.** AS 15.40.400 is amended to read:

Sec. 15.40.400. Proclamation of special primary election and special election. The governor shall issue the proclamation calling the special primary election and special election at least 50 days before the special primary election.

***Sec. 59.** AS 15.40.440 is amended to read:

Sec. 15.40.440. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PROPOSED NOMINEE'S RESPECTIVE HOUSE OR SENATE DISTRICT IN THE PRECEDING GENERAL ELECTION. A NOMINATING PETITION MAY NOT CONTAIN LESS THAN 50 SIGNATURES FOR ANY DISTRICT, AND] must be executed under oath, state in substance that which is required in a declaration of candidacy under AS 15.25.030, and include the fee required under AS 15.25.050(a) [PETITIONS FOR NOMINATION BY AS 15.25.180].

***Sec. 60.** AS 15.40.470 is amended to read:

Sec. 15.40.470. General provision for conduct of the special primary election and special election. Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of state senators, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from

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work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 61.** AS 15.45.190 is amended to read:

Sec. 15.45.190. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, special primary [RUNOFF], or primary election that is held after

- (1) the petition has been filed;
- (2) a legislative session has convened and adjourned; and
- (3) a period of 120 days has expired since the adjournment of the legislative session.

***Sec. 62.** AS 15.45.420 is amended to read:

Sec. 15.45.420. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot for the first statewide general, special, special primary [RUNOFF], or primary election held more than 180 days after adjournment of the legislative session at which the act was passed.

***Sec. 63.** AS 15.58.010 is amended to read:

Sec. 15.58.010. Election pamphlet. Before each state general election, and before each state primary, special, or special primary [RUNOFF] election at which a ballot proposition is scheduled to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

***Sec. 64.** AS 15.58.020(a) is amended by adding a new paragraph to read:

- (13) the following statement written in bold in a conspicuous location:

Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or political group or that the party or group approves of or associates with that candidate.

In each race, you may vote for any candidate listed. If a primary election was held for a state office, United States senator, or United States representative, the four candidates who received the most votes for the office in the primary election advanced to the general election. However, if one of the four candidates who received the most votes for an office at the primary election died, withdrew, resigned, was disqualified, or was certified as incapacitated 64 days or more before the general election, the candidate who received the fifth most votes for the office advanced to the general election.

At the general election, each candidate will be selected through a ranked-choice voting process and the candidate with the greatest number of votes will be

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elected. For a general election, you must rank the candidates in the numerical order of your preference, ranking as many candidates as you wish. Your second, third, and subsequent ranked choices will be counted only if the candidate you ranked first does not receive enough votes to continue on to the next round of counting, so ranking a second, third, or subsequent choice will not hurt your first-choice candidate. Your ballot will be counted regardless of whether you choose to rank one, two, or more candidates for each office, but it will not be counted if you assign the same ranking to more than one candidate for the same office.

***Sec. 65.** AS 15.58.020(b) is amended to read:

(b) Each primary, special, or special primary [RUNOFF] election pamphlet shall contain only the information specified in (a)(6) and (a)(9) of this section for each ballot measure scheduled to appear on the primary, special, or special primary [RUNOFF] election ballot.

***Sec. 66.** AS 15.58.020 is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this section, if a pamphlet is prepared and published under AS 15.58.010 for a

(1) primary election, the pamphlet must contain the following statement written in bold in a conspicuous location, instead of the statement provided by (a)(13) of this section:

In each race, you may vote for any candidate listed. The four candidates who receive the most votes for a state office, United States senator, or United States representative will advance to the general election. However, if, after the primary election and 64 days or more before the general election, one of the four candidates who received the most votes for an office at the primary election dies, withdraws, resigns, is disqualified, or is certified as incapacitated, the candidate who received the fifth most votes for the office will advance to the general election.

Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or group or that the party or group approves of or associates with that candidate;

(2) a special primary election, the pamphlet must contain the following statement written in bold in a conspicuous location, instead of the statement provided by (a)(13) of this section:

In each race, you may vote for any candidate listed. The four candidates who receive the most votes for a state office or United States senator will advance to the special election. However, if, after the special primary election and 64 days or more before the special election, one of the four candidates who received the most votes for a state office or United States senator at the primary election dies, withdraws, resigns, is disqualified, or is certified as incapacitated, the

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candidate who received the fifth most votes for the office will advance to the general election. Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or group or that the party or group approves of or associates with that candidate.

***Sec. 67. AS 15.58.030(b)** is amended to read:

(b) Not [NO] later than July 22 of a year in which a state general election will be held, an individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.030 [OR 15.25.180] may file with the lieutenant governor a photograph and a statement advocating the candidacy. [AN INDIVIDUAL WHO BECOMES A CANDIDATE FOR THE OFFICE OF UNITED STATES SENATOR, UNITED STATES REPRESENTATIVE, GOVERNOR, LIEUTENANT GOVERNOR, STATE SENATOR, OR STATE REPRESENTATIVE BY PARTY PETITION FILED UNDER AS 15.25.110 MAY FILE WITH THE LIEUTENANT GOVERNOR A PHOTOGRAPH AND A STATEMENT ADVOCATING THE CANDIDACY WITHIN 10 DAYS OF BECOMING A CANDIDATE.]

***Sec. 68. AS 15.80.010(9)** is amended to read:

(9) "federal election" means a general, special, special **primary** [RUNOFF], or primary election held solely or in part for the purpose of selecting, nominating, or electing a candidate for the office of President, Vice-President, presidential elector, United States senator, or United States representative;

***Sec. 69. AS 15.80.010(27)** is amended to read:

(27) "political party" means an organized group of voters that represents a political program and

(A) that [NOMINATED A CANDIDATE FOR GOVERNOR WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR GOVERNOR AT THE PRECEDING GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that [NOMINATED A CANDIDATE FOR UNITED STATES SENATOR WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR UNITED STATES SENATOR AT THAT GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or

(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that [NOMINATED A CANDIDATE FOR UNITED STATES REPRESENTATIVE WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR UNITED STATES REPRESENTATIVE AT THAT GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election;

***Sec. 70. AS 15.80.010** is amended by adding a new paragraph to read:

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(46) "ranked-choice voting" means, in a general election, the method of casting and tabulating votes in which voters rank candidates in order of preference and in which tabulation proceeds in sequential rounds in which (a) a candidate with a majority in the first round wins outright, or (b) last-place candidates are defeated until there are two candidates remaining, at which point the candidate with the greatest number of votes is declared the winner of the election.

***Sec. 71.** AS 39.50.020(b) is amended to read:

(b) A public official or former public official other than an elected or appointed municipal officer shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor and lieutenant governor and, if the candidate is not subject to AS 24.60, the legislature shall file the statement under AS 15.25.030 [OR 15.25.180]. Municipal officers, former municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

***Sec. 72.** AS 15.25.014, 15.25.056, 15.25.110, 15.25.120, 15.25.130, 15.25.140, 15.25.150, 15.25.160, 15.25.170, 15.25.180, 15.25.185, 15.25.190, 15.25.200; AS 15.40.141, 15.40.142, 15.40.150, 15.40.200, 15.40.210, 15.40.290, 15.40.300, 15.40.450, and 15.40.460 are repealed.

***Sec. 73.** The provisions of this act are independent and severable. If any provision of this act, or the applicability of any provision to any person or circumstance, shall be held to be invalid by a court of competent jurisdiction, the remainder of this act shall not be affected and shall be given effect to the fullest extent possible.

***Sec. 74.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION; VOTER EDUCATION AS TO CHANGES MADE TO STATE ELECTION SYSTEMS
THROUGH ADOPTION OF A RANKED-CHOICE VOTING SYSTEM.

For a period of not less than two calendar years immediately following the effective date of this Act, the director of elections shall, in a manner reasonably calculated to educate the public, inform voters of the changes made to the state's election systems in this Act.



Lieutenant Governor Kevin Meyer
STATE OF ALASKA

August 30, 2019

Jason Grenn
4611 Caravelle Drive
Anchorage, Alaska 99502

Mr. Grenn:

On July 3, 2019, I received your application for the following initiative that you entitled:

"An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'."

I forwarded the application to the Division of Elections for verification of signatures and to the Department of Law for legal review.

The Division of Elections determined that 159 of the 162 signatures submitted were those of qualified voters. Therefore, the application has a sufficient number of sponsors to qualify for circulation of a petition under AS 15.45.030. The petition statistics report prepared by the Division of Elections is enclosed.

The Department of Law reviewed the application for compliance with AS 15.45.040 and recommends that I decline to certify this initiative on the grounds that the bill violates the single-subject rule. Based on this recommendation, and in accordance with AS 15.45.080, I am denying certification of your initiative application. A copy of the Department of Law opinion dated August 29, 2019 regarding the application is enclosed.

Please be advised that under AS 15.45.240, "any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - AS 15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given."

If you have further questions, please contact April Simpson in my office at (907) 465-4081.

Sincerely,

A handwritten signature in black ink that reads "Kevin Meyer".

Kevin Meyer
Lieutenant Governor



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

OFFICE OF THE ATTORNEY GENERAL

1031 West Fourth Avenue, Suite 200
Anchorage, AK 99501
Main: (907) 269-5100
Fax: (907) 269-5110

August 29, 2019

Via Email and U.S. Mail

The Honorable Kevin Meyer
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *19AKBE Ballot Measure Application Review*
AGO No. 2019200578

Dear Lieutenant Governor Meyer:

You asked us to review an application for an initiative bill entitled:

An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'. (19AKBE).

Our role in reviewing initiatives is to ensure they meet all constitutional and statutory requirements. We do not opine on the merits of the policy choices presented or any administrative or implementation issues that could arise if the initiative bill was

enacted. Because 19AKBE addresses more than one subject in violation of the Alaska Constitution, we recommend that you decline to certify the application.

I. The proposed initiative bill.

This bill proposed by this initiative would both overhaul Alaska's elections process and alter its campaign finance laws by requiring additional campaign finance disclosures and disclaimers. The most significant change would be to abolish the state's mandatory primary election or petition process and establish an open nonpartisan primary system in which all candidates—regardless of party affiliation or non-affiliation—would run in a single primary election. All candidates would appear on one ballot, and each candidate could choose to have his or her political party or group affiliation listed by the candidate's name or choose to be listed as undeclared or nonpartisan. The top-four candidates with the most votes in the primary election would then have their names placed on the general election ballot. The ballots, polling places, and election pamphlets would include notices explaining that the identification of a candidate's political party or group affiliation on the ballot is not an endorsement of the candidate by that political party or group.

The act would also establish a ranked-choice general election. Under this new ranked-choice framework, each voter would be allowed to "rank" the four listed candidates. A "1" ranking would reflect the voter's first choice candidate, a "2" the voter's second choice candidate, and so on. The Division of Elections would then tally the votes for each candidate by counting every ballot's first-ranked candidate. If there were more than two candidates and no candidate received a majority of the first-ranked votes, then the candidate with the least amount of votes would be considered defeated and removed from counting. Any ballot that had selected the removed candidate as the first-ranked candidate would then be counted for voter's second-ranked candidate. This process would repeat until there were only two candidates remaining or one candidate received a majority of the votes.

Lastly, the act would modify state campaign law by requiring new and additional disclosures. It would require additional disclosures for contributions of more than \$2,000 to independent expenditure groups. It would also require disclaimers on any paid communications by an independent expenditure group, when a majority of contributors to the group reside outside Alaska.

In total, 19AKBE contains 74 sections, and provides as follows:

Section 1 would add a new section to the uncodified law. It would list findings and intent supporting the substantive law changes made in the initiative bill and state that

Alaska supports a constitutional amendment allowing citizens to regulate the raising and spending of money in elections.

Section 2 would change the requirements for two of the three election board members appointed by the election supervisor. Under current law, the election supervisor shall appoint one nominee from the political party of which the governor is a member and one nominee of the political party that received the second largest number of votes statewide. Section 2 would change the requirement to include political party “or political group with the largest number of registered voters at the time of the preceding gubernatorial election” and political party “or political group with the second largest number of registered voters at the time of the preceding gubernatorial election.”

Section 3 would allow each candidate, regardless of party affiliation or party nomination, to appoint one or more poll watchers. Section 3 would also make a conforming change because of the repeal of the special runoff election under AS 15.40.141 proposed in Section 72 of the initiative bill.

Section 4 would change the qualifications of certain appointees to the Alaska Public Offices Commission by allowing the governor to appoint a member of “political groups with the largest number of registered voters” as of the most recent preceding general election at which a governor was elected.

Section 5 would make a conforming change necessitated by the change in Section 4.

Section 6 would add disclosure requirements relating to the “true source” of contributions to a nongroup entity in excess of \$2,000 annually.

Section 7 would add a new subsection requiring certain disclosures from every individual, person, nongroup entity, or group that contributes more than \$2,000 annually to an independent expenditure group.

Section 8 would change the contribution limits for governor and lieutenant governor to a joint campaign limit of \$1,000 annually for an individual and \$2,000 annually for a group. This reflects the proposed changes to the primary election whereby the governor and lieutenant governor would run jointly on a single ticket.

Section 9 would add disclosure requirements for contributions to independent expenditure groups, including a requirement that contributions to independent expenditure groups may not annually total \$2,000 or more of “dark money,” as defined in Section 17.

Section 10 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 11 would require that certain existing disclaimers on paid political advertisements be shown throughout the entirety of the communication if in a broadcast, cable, satellite, internet or other digital format.

Section 12 would add a new subsection to require an additional disclaimer on paid political advertisements funded by an outside-funded entity, as defined in Section 19.

Section 13 would make conforming changes necessitated by the repeal of the nominating petition process under AS 15.25.140-15.25.200 as proposed in Section 72 of the initiative bill.

Section 14 would require disclosure by contributors whose contributions to independent expenditure groups, or a group the contributor knows or has reason to know will make independent expenditures, exceed \$2,000 annually.

Section 15 would create new fines for failure to disclose certain contributions to independent expenditure groups as required by Section 7 and failure to disclose the “true source” of a contribution as required by Sections 7 and 9.

Section 16 would make conforming changes necessitated by the change to an open primary.

Sections 17-19 would define the new terms in the campaign finance sections, including “dark money,” “true source,” and “outside-funded entity.”

Section 20 would establish an open primary system.

Section 21 would allow each candidate to have his or her party affiliation designated after the candidate's name on the ballot, or choose the designation of nonpartisan or undeclared.

Sections 22-23 would require additional notices on the ballot and at each polling place letting voters know that a candidate's designated party affiliation on the ballot does not signify the political party or political group's approval or endorsement of that candidate.

Section 24 would establish ranked-choice voting for the general election, whereby each voter may rank all of the candidates. This section would provide how the ranked-

choice votes should be counted, starting with the number “1” ranking on all ballots. If there are more than two candidates and none of the candidates gets a majority of the total votes, the candidate with the least amount of votes would be removed from the count, and ballots that ranked that candidate as “1” would then be counted for the second ranked candidate on those ballots. This would continue until a candidate obtains a majority or there are only two candidates remaining, at which point the candidate with the highest number of votes wins.

Section 25-27 would make conforming changes to account for ranked-choice voting on the general election ballot and the open primary system.

Section 28 would make conforming changes necessitated by the change to an open primary system.

Section 29 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 30 would change the requirements for two of the four district absentee ballot counting board members and two of the four district questioned ballot counting board members. Under current law, the election supervisor shall appoint one nominee from the political party of which the governor is a member and one nominee of the political party that received the second largest number of votes statewide. Section 30 would change the requirement to include political party “or political group with the largest number of registered voters at the time of the preceding gubernatorial election” and political party “or political group with the second largest number of registered voters at the time of the preceding gubernatorial election.”

Sections 31-36 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 37 would adopt an open primary system. The primary would no longer serve to determine the nominee of a political party or political group. Instead, the primary would narrow the number of candidates whose name would appear on the general election ballot to four.

Section 38 would amend the candidate declaration to require that candidates for governor and lieutenant governor include the name of the candidate’s running partner, since the governor and lieutenant governor would run jointly in the primary. This section would also make other conforming changes.

Section 39 would repeal and reenact the statute establishing the process for preparation and distribution of ballots to account for the open primary system where there would only be one primary ballot.

Section 40 would repeal and reenact the statute that establishes which candidates will be placed on the general election ballot to account for the open primary system. This would include a process for filling a vacancy that occurs after the primary election.

Section 41 would allow a write-in candidate at the general election to designate his or her political party or political group affiliation, or be designated as undeclared or nonpartisan.

Section 42 would eliminate the requirement for write-in candidates that a candidate for governor run jointly with a candidate for lieutenant governor from the same political party or group.

Section 43 would provide that the ranked-choice method of voting in the general election applies to the election of electors of President and Vice President.

Sections 44-49 would amend the special election process for filling a vacancy in the office of United States senator or United States representative to provide for a special primary, conducted as an open primary, followed by a special election. These sections would also make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 and the party petition process under AS 15.40.200-15.40.210 as proposed in Section 72 of the initiative bill.

Section 50-54 would amend the special election process for filling a vacancy in the office of the governor to provide for a special primary, conducted as an open primary, followed by a special election.

Section 55 would amend the statute providing for the qualifications and the confirmation process for an appointee to a vacant legislative office to include “political group” along with “political party.” Under the existing statute, being a member of a specific “political party” becomes one of the qualifications for appointment. This section would include “political group” as a qualification, if the predecessor in office was a member of a “political group” but not a “political party.”

Sections 56-60 would amend the special election process for filling a vacancy in the state senate to provide for a special primary, conducted as an open primary, followed by a special election.

Sections 61-63 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Sections 64-66 would require the election pamphlets for the general election and the primary election to include a notice to voters that the any political party or political group affiliation listed next to a candidate does not represent the political party or group's endorsement or nomination. The election pamphlets would also include an explanation of the open primary system. Lastly, the general election pamphlet would explain the ranked-choice voting method.

Section 67 would make conforming changes necessitated by the repeal of the party petition process under AS 15.25.110 and the no-party nomination petition process under AS 15.25.180 as provided in Section 72 of the initiative bill.

Section 68 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 69 would amend the definition of "political party" by deleting language referring to the "nomination" of a candidate by the group seeking to be recognized as a political party. Instead, political party status would only be determined by the number of registered voters the group has, not the number of votes a prior nominated candidate received.

Section 70 would add a definition of "ranked-choice voting."

Section 71 would make conforming changes necessitated by the repeal of the no-party candidate petition process under AS 15.25.180 as provided in Section 72 of the initiative bill.

Section 72 would repeal statutes relating to party petitions, no-party candidates, and special-runoff elections.

Section 73 is a severability clause.

Section 74 would add a new section of uncodified law to require the director of elections for two years to make efforts to inform voters of the changes made to the state's elections process under this initiative bill.

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within 60 calendar days of receipt and “certify it or notify the initiative committee of the grounds for denial.” The application for the 19AKBE initiative was filed with the Division of Elections on July 3, 2019. The sixtieth calendar day after the filing of the initiative is Sunday, September 1, 2019.

Under AS 15.45.080, certification shall be denied only if: “(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors.”

A. Form of the proposed initiative bill.

In evaluating an application for an initiative bill, you must determine whether the application is in the “proper form.”¹ Specifically, you must decide whether the application complies with “the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot.”²

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: “Be it enacted by the People of the State of Alaska”; and (4) that the bill not include prohibited subjects. The list of prohibited subjects is found in article XI, section 7 of the Alaska Constitution and AS 15.45.010. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.³ You may deny certification only if the measure violates one or more of these restrictions, or if “controlling authority establishes its unconstitutionality.”⁴

In reviewing this initiative bill, we identified two potential concerns that we carefully reviewed. First, we considered whether the bill violates the single-subject rule because it makes significant changes to distinct democratic processes; it establishes an

¹ Alaska Const. art. XI, § 2.

² *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

³ AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

⁴ *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 n. 22 (Alaska 2003).

open primary, moves to a ranked-choice general election, and changes campaign finance disclosure laws. Second, we evaluated whether the change to an open primary system and the new campaign finance disclosure requirements were clearly unconstitutional under existing authority. As explained further below, we conclude that the bill violates the single-subject rule because it contains more than one subject. We further conclude that although the bill is constitutionally suspect, there is no controlling authority directly on point such that the proposed provisions could be deemed clearly unconstitutional.

Thus, the initiative bill meets only three of the four requirements of AS 15.45.040. The subjects of the bill are expressed in the title, the bill has the required enacting clause, and the bill does not include any of the prohibited subjects and is not clearly unconstitutional under existing authority. But the bill fails to meet the requirement that the bill be confined to one subject.

i. The initiative bill violates the single-subject rule.

Article II, section 13 of the Alaska Constitution requires that “[e]very bill shall be confined to one subject.” The single-subject rule requires that all parts of a bill “fall under some one general idea” and “be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.”⁵ The court will only strike down a bill for violating this rule if the violation is “substantial and plain.”⁶

⁵ *Croft v. Parnell*, 236 P.3d 369, 372-373 (Alaska 2010); *Gellert v. State*, 522 P.2d 1120, 1123 (Alaska 1974) (quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891)).

⁶ *Croft*, 236 P.3d at 373.

Despite the “considerable breadth” the Alaska Supreme Court has afforded the single-subject rule,⁷ the Court has also made clear that the will of the voter has profound importance in any single-subject analysis.⁸ In the context of initiative bills, the single-subject rule is intended to protect “the voters’ ability to effectively exercise their right to vote by requiring that different proposals be voted on separately.”⁹ Confining initiative bills to one subject assures both that voters can “express their will through their votes more precisely,” and “prevents the adoption of policies through stealth or fraud, and prevents the passage of measures lacking popular support by means of log-rolling.”¹⁰ Log-rolling, the Court has explained, “consists of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure.”¹¹

⁷ *Id.* See also *See Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 & n. 23 (Alaska 1966) (criminal penalty for false statements in application for earthquake relief funds “fairly incidental to the general subject ... of grants to homeowners”); *Gellert*, 522 P.2d at 1123 (Alaska 1974) (flood control projects and small boat harbors “all part of a cooperative water resources development program”); *North Slope Borough v. SOHIO*, 585 P.2d 534, 545–46 (Alaska 1978) (various provisions on municipal and state taxes all “relate directly to state taxation”); *Short v. State*, 600 P.2d 20, 22–24 & n. 2 (Alaska 1979) (purposes of new correctional facilities “sufficiently related to the purposes” of new buildings for “state troopers, fish and wildlife protection, a motor vehicles division, [and] a fire prevention division”); *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 414–15 (Alaska 1982) (provisions regulating sale of private land, and provisions on state's power to lease state-owned land and zone private lands all “in some respect concern[] land”); *Yute Air v. McAlpine*, 698 P.2d 1173, 1175, 1181 (Alaska 1985) (repeal of regulations of “motor and air carriers in Alaska,” prohibition on further similar regulation, and requirement that governor seek repeal of federal statute that, among other things, regulates shipping by sea, all embraced by “[t]he subject ‘transportation’ ”); *Evans v. State*, 56 P.3d 1046, 1049, 1070 (Alaska 2002) (changes to damages recoverable for torts, changes to tort statutes of limitations, change to allocation of fault between parties in tort suits, change to offer of judgment rules, and grant of partial immunity to hospitals all “within the single subject of ‘civil actions’ ”).

⁸ *Croft*, 236 P.3d. at 372.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Gellert*, 522 P.2d at 1122; see also Proceedings of the Alaska Constitutional Convention at 1746–47 (discussion of the single-subject requirement and the concern over log-rolling).

The Alaska Supreme Court's approach to the single-subject test reflects its increasing misgivings with the breadth of the rule under past cases. In *State v. First National Bank of Anchorage*, for example, the Court concluded that bill sections related to the Uniform Land Sales Practices Act and the Alaska Land Act both fell under the single subject of "land."¹² The Court's discussion, however, illuminated its dissatisfaction with the test's expansiveness, which effectively hamstrung its ruling. The Court acknowledged:

Were we writing on a clean slate, we would be inclined to find this subject impermissibly broad. Permitting such breadth under the one-subject rule could conceivably be misconstrued as a sanction for legislation embracing the whole body of law. Nevertheless, while the issue is indeed close, we are unable to say that the legislature has transgressed the limits of article II, section 13 established by prior decisions of this court.¹³

A few years later, the Court reiterated its dissatisfaction with the single-subject test and the unique risks it posed in the initiative context. In *Yute Air Alaska, Inc. v. McAlpine*,¹⁴ a per curiam court determined that an initiative titled "Reducing Government Regulation of Transportation," satisfied the single-subject test even though the bill sought to repeal statutes regulating motor and air carriers in Alaska, open the carrier business further, prohibit municipal regulation of such activities, and require the governor to repeal the federal statute requiring the use of United States vessels for shipping goods between U.S. ports.¹⁵ But the Court once again expressed the reservations it first raised in *First National*.¹⁶ And in writing his dissent, Justice Moore noted that the court had "mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce," leading it to become "almost meaningless,"¹⁷ whereby even the most disparate subjects could be "enfolded within the cloak of a broad generality."¹⁸

Justice Moore aptly recognized that application of the single-subject rule is to some degree context specific.¹⁹ For example, when a bill becomes a law through an

¹² 660 P.2d 406, 414-15 (Alaska 1982).

¹³ *Id.* at 415.

¹⁴ 698 P.2d 1173 (Alaska 1985).

¹⁵ *Id.* at 1174.

¹⁶ *Id.*

¹⁷ *Id.* at 1182 (Moore, J., dissenting).

¹⁸ *Id.* at 1183.

¹⁹ *Id.* at 1184.

initiative, “the problems the single-subject rule was designed to prevent are exacerbated,” and “[t]here is a greater danger of logrolling, the deliberate intermingling of issues to increase the likelihood of an initiative’s passage, and there is a greater opportunity for “inadvertence, stealth and fraud” in the enactment-by-initiative process.”²⁰

Years later, the Alaska Supreme Court decided *Croft v. Parnell*, and recognized that the concerns Justice Moore articulated with the single-subject test are particularly salient in the initiative context. In *Croft*, the Court held that an initiative bill that sought to publicly fund state elections by increasing the oil production tax violated the single-subject rule.²¹ In reviewing the bill, the Court recognized that the single-subject rule protects voters’ ability to effectively exercise their right to vote and assures that measures passed secure popular support.²² It then held that the initiative “directly implicate[d] one of the main purposes of the single-subject rule—the prevention of log-rolling—in two ways.”²³ First, “coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsor’s initiative.”²⁴ And second, “offering the chance of increased Permanent Fund Dividend payments runs the risk of garnering support for the clean elections program from voters who are otherwise indifferent—or even unsupportive—of public funded campaigns.”²⁵

Croft thus recognizes the acute dangers of log-rolling in the initiative context, and the Alaska Supreme Court’s interest in preventing the harms the single subject rule was designed to combat. When confronted with an initiative, voters have only one opportunity to provide an up or down vote, regardless of their feelings on any of the distinct proposed provisions.²⁶ Unlike legislators, they cannot deliberate, propose amendments, and compromise on the relative merits of dissimilar provisions. In this context, it is therefore critical for voters to have a clear choice. They must be allowed to vote on different bills covering different subjects separately. The single-subject rule protects them from having to struggle with how to express their political will through a vote on an overly complex initiative bill covering disjointed subjects.

²⁰ *Id.*

²¹ *Croft*, 236 P.3d at 374.

²² *Id.* at 372-33.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 373 (recognizing that proposing new government program and creation and “soft dedication” of a new revenue source “does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal.”).

Like the initiative bill at issue in *Croft*, 19AKBE runs afoul of these principles and directly implicates the main purposes of the single subject rule in the initiative context. It “deprives voters of an opportunity to send a clear message” by covering at least two, if not three, discrete and important subjects. As presented, 19AKBE would force voters to accept or reject as a whole: (1) the elimination of the party primary system and the establishment of an entirely new nonpartisan primary; (2) a new ranked-choice voting process that amends how candidates in the general election are elected and how votes are counted; and (3) additional campaign finance disclosure and disclaimer requirements. These subjects are, each in their own right, of significant import to Alaskans. And they directly implicate at least three constitutional rights—the right to advocate for the election or defeat of candidates through monetary contributions,²⁷ the associational right of political parties and political groups to select a standard-bearer,²⁸ and the right to vote.²⁹

The *Croft* court’s focus on the will of the voter also takes on profound importance when one considers the diversity, complexity, and sheer scope of 19AKBE. The subjects at issue in 19AKBE involve core decisions regarding democracy, the right to free speech, and the right to association under the First Amendment. There is nothing more foundational to our democracy than voting and electing our leaders. How that process should work, how a person’s vote is counted, and what role political parties play in that process are questions that impact every Alaskan. To combine those issues in a single initiative with yet another controversial question concerning what burdens should be placed on a person’s or entity’s right to support or oppose specific candidates is a bridge too far under the single-subject rule.

The subjects presented in this initiative also engender understandable passion, controversy and strong opinions. One could easily imagine a voter passionately wanting an open primary, yet zealously opposing more robust campaign finance requirements due to First Amendment concerns. Forcing both of these subjects into a single bill deprives that voter of the opportunity to express their will on either. Making voters take such an all or nothing approach thus compromises voters’ ability “to effectively exercise their right to vote,”³⁰ on critical questions that go to the very core of government. It could also result in “the passage of measures lacking popular support by means of log-rolling,” where

²⁷ See *Citizen’s United v. Federal Election Commission*, 558 U.S. 310 (2010).

²⁸ See *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008); *State v. Alaska Democratic Party*, 426 P.3d 901.

²⁹ See *Sonneman v. State*, 969 P.2d 632, 637 (Alaska 1998) (“voting is unquestionably a fundamental right”).

³⁰ *Id* at 372.

some groups might well support the significant changes to the primary and general elections but oppose increased campaign finance reform—or vice versa.³¹

Despite the breadth afforded the single-subject rule, 19AKBE embodies many of the concerns identified in *Croft*, and for that reason it violates the single-subject rule. Whether the changes proposed in 19AKBE are good or bad policy will ultimately be up to the people or the legislature. But because an initiative must be in the proper form in order to be certified and 19AKBE violates the single-subject rule, we recommend denial of certification.

ii. **19AKBE is not clearly unconstitutional under existing authority**

We also considered whether any of the provisions in 19AKBE were clearly unconstitutional such that the petition must be rejected. The Alaska Supreme Court generally “refrain[s] from giving pre-enactment opinions on the constitutionality of statutes, whether proposed by the legislature or by the people through their initiative power, since an opinion on a law not yet enacted is necessarily advisory.”³² But the Court has also articulated two grounds on which a petition may be rejected before circulation: (1) “if it violates the subject matter restrictions” discussed above; or (2) if it “proposes a substantive ordinance whereby controlling authority establishes its unconstitutionality.”³³ The second ground is considered as “an exception to the rule that judicial review of an initiative’s constitutionality may not be obtained until after the voters have enacted the initiative.”³⁴ The Court provided an example of a “clearly unconstitutional” initiative bill as one that would require segregation in schools in violation of *Brown v. Board of Education of Topeka, Kansas*, 349 U.S. 294 (1955).³⁵ In 2006, the Alaska Supreme Court applied this framework when it affirmed the Lieutenant Governor’s decision not to certify an initiative bill that called for Alaska’s secession from the United States, upon concluding that “secession is clearly unconstitutional.”³⁶

We evaluated 19AKBE in this light, and conclude that despite the questionable nature of many of the significant proposed changes in this initiative, it does not rise to the level of being “clearly unconstitutional.” 19AKBE includes provisions that would (1) eliminate the political party primary, which plainly implicate the freedom of association

³¹ *Ibid.*

³² *Kohlhaas v. State*, 147 P.3d 714, 717 (2006).

³³ *Id.*

³⁴ *Id.* at 717-18.

³⁵ *Id.* at 718 and n.17.

³⁶ *Id.* at 717-18.

rights of political parties and political groups; and (2) require additional campaign finance disclosures relating to independent expenditure groups, which implicate free speech rights.

As to the first issue, 19AKBE would significantly alter the manner in which candidates advance to the general election by creating an open, non-partisan primary, thereby implicating the associational rights of political parties. The U.S. Supreme Court has acknowledged a party's interest in the process by which a party selects its standard bearer. In *California Democratic Party v. Jones*, the Court invalidated California's blanket primary, whereby all parties' primary races to nominate party candidates were included on the same ballot, and every voter could vote for any candidate.³⁷ The Court held that the scheme violated the parties' First Amendment rights by infringing on a party's ability to exclude voters from voting to nominate the parties' candidate for the general election.

The Alaska Supreme Court has also recognized a political party's associational rights to choose its nominees in a recent case involving the Democratic Party's challenge to a state statute that prohibited a political party from allowing nonmembers to run in the party primary.³⁸ In *State v. Alaska Democratic Party*, the Court repeatedly acknowledged that the party had a "right to choose its general election nominees." It ultimately invalidated the state's party-membership provision, concluding that the statute severely burdened the party's right and was not narrowly tailored to achieve the state's interests.³⁹

Nevertheless, the U.S. Supreme Court has also upheld a state open primary system similar to that proposed by 19AKBE, concluding that the law on its face did not "impose a severe burden on political parties' associational rights."⁴⁰ Therefore, while the U.S. Supreme Court upheld an open primary system from a facial constitutional attack—though leaving open the question of how any later as-applied challenge might be resolved—the Alaska Supreme Court has not yet had an opportunity to directly review this issue.

The Alaska Constitution does protect political party associational rights more robustly than the federal constitution.⁴¹ Accordingly, it is possible that the Alaska

³⁷ *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2008).

³⁸ *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018).

³⁹ *Id.* at 909-915.

⁴⁰ *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 444 (2008).

⁴¹ *Alaska Democratic Party*, 426 P.3d at 909.

Supreme Court could decline to follow the reasoning of *Washington State Grange*⁴² and could conclude that 19AKBE violates a political party's speech and/or associational rights as protected by the Alaska Constitution. The Court could reach this conclusion because 19AKBE would permit a candidate to declare party affiliation on the primary and general election ballot and would permit voters unaffiliated with a party to vote on whether to pass the party's candidate on to the general ballot, while denying the party itself the ability to identify its standard bearer on the general election ballot. Regardless of how valid these arguments might appear, however, it cannot be said at this time that they demonstrate a "clear unconstitutionality" of 19AKBE.

19AKBE would create an open primary similar to the one that was facially upheld by the U.S. Supreme Court. Essentially under 19AKBE, the state would not be involved in political party nominations of candidates. Instead, a political party would be free to endorse whichever candidate it chooses in the open primary and general election, and it would be up to the political parties as to how that nomination or endorsement occurred. This type of open primary raises unique constitutional concerns that implicate a party's rights of association. But under the highly deferential pre-enactment standard of review, there is no clear legal authority directly on point such that the open primary system contemplated under 19AKBE can be deemed "clearly unconstitutional."

The second issue involves campaign finance disclosure laws relating to independent expenditure groups. The most concerning provisions relate to "dark money" restrictions and additional disclosures for "outside-funded entities." Campaign finance laws, which regulate political speech, by their very nature implicate the First Amendment and are subject to constitutional challenge. Courts may be called upon to determine whether the government's interest in disclosure laws, which are intended to ensure transparent and fair elections, is outweighed by the burdens the initiative bill would place on the core First Amendment right to engage in political speech. However, the question here is simply are these provisions clearly unconstitutional. Despite the potential challenges that could be raised against the initiative once enacted, there is no existing authority under which the campaign finance disclosure requirements in 19AKBE can be deemed unconstitutional under the Alaska Supreme Court's legal framework for pre-enactment review.

In fact, the U.S. Supreme Court upheld campaign finance disclosure requirements in *Citizens United v. Federal Election Commission*,⁴³ and described the existing precedent authorizing disclosure requirements as follows:

⁴² *Washington State Grange*, 552 U.S. at 444.

⁴³ 558 U.S. 310 (2010).

Disclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities or prevent anyone from speaking. The *Buckley* Court explained that disclosure can be justified by a governmental interest in providing the electorate with information about election-related spending sources However, the Court acknowledged that as-applied challenges would be available if a group could show a reasonable probability that disclosing its contributors' names would subject them to threats, harassment, or reprisals from either Government officials or private parties.⁴⁴

For the reasons described above, none of the provisions in 19AKBE are clearly unconstitutional under existing authority.

B. Form of the application.

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

- (1) proposed bill;
- (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
- (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first requirement, as well as the latter portion of the second requirement regarding the statement on each signature page. With respect to the first clause of the second requirement, we understand the Division of Elections has reviewed the sponsor signatures and determined that the application contains the signatures and addresses of—159 qualified voters. The application also includes a designation of an initiative committee, who subscribed to the application, thus satisfying the third requirement. Therefore, the application is in the proper form.

⁴⁴ *Id.* at 885 (internal quotations and citations omitted).

III. Conclusion.

The single-subject rule serves an important constitutional purpose in the initiative context by protecting voters' ability to have their voices heard. But 19AKBE, if certified, would force voters into an all or nothing approach on multiple important policy choices, all of which implicate their fundamental constitutional rights in different ways. Because we conclude that the initiative bill violates the single-subject rule, we recommend that you decline to certify the initiative application.

If you decide to reject the initiative, we suggest that you give notice to all interested parties and groups who may be aggrieved by your decision.⁴⁵ This notice will trigger the 30-day appeal period during which these persons must contest your action.⁴⁶

Please contact us if we can be of further assistance to you on this matter.

Sincerely,



Kevin G. Clarkson
Attorney General

⁴⁵ AS 15.45.240.

⁴⁶ AS 15.25.240; *McAlpine*, 762 P.2d at 86.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

HARRY N. YOUNG, JR.,)
)
)
Plaintiff,)
)
)
v.)
)
KEVIN MEYER, in his official capacity,)
as Lt. Governor of the State of Alaska,)
GAIL FENUMIAI, in her capacity as)
Director of the Alaska Division of)
Elections, and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)
)
)
Defendants.)
) Case No. 3AN-19-_____ CI

NOTICE OF FILING UNSIGNED AFFIDAVIT OF PLAINTIFF

Plaintiff Harry N. Young, Jr. hereby gives notice that the Affidavit he has submitted with Plaintiff's Motion for Expedited Consideration and Plaintiff's Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction is unsigned. Plaintiff retained his counsel on September 17, 2019, and had a medical appointment early in the morning on September 18, 2019, that prevented him from signing his Affidavit prior to filing. Following Plaintiff's appointment, he will be stopping by his counsel's office to sign his Affidavit, and the undersigned will file the signature page later on September 18, 2019.

///

**HOLLAND &
KNIGHT LLP**

420 L Street, Suite 400
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

///

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DATED at Anchorage, Alaska this 18th day of September, 2019.

HOLLAND & KNIGHT LLP
Attorneys for Plaintiff

By: 

Matthew Singer
Alaska Bar No. 9911072
Lee C. Baxter
Alaska Bar No. 1510085

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NOTICE OF FILING UNSIGNED AFFIDAVIT
YOUNG V. MEYER, FENUMIAI, ET AL.
CASE NO. 3AN-19-_____ CI

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

HARRY N. YOUNG, JR.,)
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Plaintiff,)
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KEVIN MEYER, in his official capacity,)
as Lt. Governor of the State of Alaska,)
GAIL FENUMIAI, in her capacity as)
Director of the Alaska Division of)
Elections, and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)
)
Defendants.)

) Case No. 3AN-19-_____ CI

AFFIDAVIT OF HARRY N. YOUNG, JR.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Harry Newton Young, Jr., being duly sworn, depose and state as follows:

1. I have been a resident of Alaska for nearly 30 years, since January 1, 1990.

I retired as a Major with the United States Air Force and presently reside in Eagle River, Alaska.

2. I am a registered voter and Precinct Leader in District 14, Alaska Republican Party.

3. I understand that the Division of Elections is intending to release signature booklets for a ballot initiative involving "ranked order primaries" and other election

changes. This initiative has not been certified by the Lt. Governor, as is required by Article XI of the Alaska Constitution.

4. Article XI, Section 3 of the Alaska Constitution states: "After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors." The Constitution dictates a specific sequence of events and does not allow for petitions to be issued by the Division of Elections before the Lt. Governor certifies the initiative.

5. I believe that our framers selected the words of our Constitution carefully and that our government has a heightened duty to follow the words of the Constitution. If public officials are free to simply make up rules as they go along, without regard to what our Constitution and laws say, then our system of laws will become meaningless and will eventually result in tyranny.

6. The Division of Elections' actions in agreeing to issue the signature booklets in a manner that violates the Constitution is unfair to me and all other voters who rely on the State to follow the enacted laws. This action will create confusion; it will set a bad precedent; and it will lead the State down a slippery slope where the state government may feel free to ignore other terms of our Constitution.

7. I believe that an injunction is the only appropriate remedy to halt this violation of the Alaska Constitution and is the only remedy that would address the harm that this action will cause to Alaska voters. A monetary award by a court months from now will do nothing to remedy the State's violation of the laws it is required to enforce and uphold.

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FURTHER YOUR AFFIANT SAYETH NAUGHT.

Harry N. Young, Jr.

SUBSCRIBED AND SWORN to before me this _____ day of September, 2019,
at Anchorage, Alaska.

Notary Public in and for Alaska
My Commission Expires: _____

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AFFIDAVIT OF HARRY N. YOUNG, JR.
YOUNG V. MEYER, FENUMIAI, ET AL.
CASE NO. 3AN-19-_____ CI

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

HARRY N. YOUNG, JR.,)
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Plaintiff,)
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KEVIN MEYER, in his official capacity,)
as Lt. Governor of the State of Alaska,)
GAIL FENUMIAI, in her capacity as)
Director of the Alaska Division of)
Elections, and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)
)
Defendants.)
) Case No. 3AN-19-_____ CI

**ORDER GRANTING MOTION FOR TRO AND SETTING
HEARING ON REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF**

The Court, upon careful consideration of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction ("Plaintiff's Motion"), hereby **GRANTS** Plaintiff's Motion.

IT IS HEREBY ORDERED that Defendants are enjoined from providing the printed signature booklets to the proponents of the 19AKBE initiative until the Court has held a hearing on Plaintiff's request for preliminary injunctive relief.

IT IS FURTHER ORDERED that the Court will convene a preliminary injunction hearing on September _____, 2019 in courtroom _____ at _____ o'clock.

DATED at Anchorage, Alaska this _____ day of September, 2019.

Superior Court Judge

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KNIGHT LLP**
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